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Supreme Court, U.S.
FILED
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No. 97-569

In the Supreme Court of the United States

OCTOBER TERM, 1997

BURLINGTON INDUSTRIES, INC.,
Petitioner,

v.

KIMBERLY B. ELLERTH,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 10, 1997
CERTIORARI GRANTED JANUARY 23, 1998

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U.S. District Court
Northern District of Illinois (Chicago)

CIVIL DOCKET FOR CASE #: 95-CV-839

Ellerth v. Burlington Ind. Inc. Filed: 02/09/95

Assigned to: Hon. Ruben Castillo
Demand: $0,000
Lead Docket: None

Jury demand: Plaintiff
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 42:2000 Job Discrimination (Sex)

KIMBERLY B ELLERTH
plaintiff

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v.

BURLINGTON INDUSTRIES, INC.
defendant

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Docket as of March 1, 1996 0:33 am

Proceedings include all events. TERMED APPEAL
1:95cv839 Ellerth v. Burlington Ind Inc GOTTSC

2/9/95	1	COMPLAINT; jury demand - Civil cover sheet - Appearance(s) of Margaret Ann Zuleger, Ernest Thomas Rossiello as attorney(s) for plaintiff with Rule 39 affidavits (original and 1 copy summons(es) issued.) (Documents: 1-1 through 1-5) (dj)
2/9/95	--	RECEIPT regarding payment of filing fee paid; on 2/9/95 in the amount of $120.00, receipt #449731. (dj)
2/9/95	2	CONTINGENCY FEE AGREEMENT (not in public case file) (dj)
2/13/95	3	RETURN OF SERVICE executed upon defendant Burlington Ind Inc on 2/10/95 (jmp) [Entry date 02/15/95]
2/24/95	5	ATTORNEY APPEARANCE for defendant Burlington Ind Inc by James J. Casey, Jeffrey Jerome Ward (Temporarily

		unavailable for docketing) (jmp) [Entry date 03/08/95] [Edit date 03/08/95]
2/24/95	6	RULE 39 Affidavit of James J. Casey (Temporarily unavailable for docketing) (jmp) [Entry date 03/08/95] [Edit date 03/08/95]
2/24/95	7	RULE 39 Affidavit of Jeffrey Jerome Ward (Temporarily unavailable for docketing) (jmp) [Entry date 03/08/95]
2/27/95	4	ANSWER to plaintiff's complaint by defendant Burlington Ind Inc (jmp) [Entry date 02/28/95]
3/10/95	8	AMENDMENT by plaintiff Kimberly B Ellerth to complaint [1-1] (Attachments) (jmp) [Entry date 03/14/95]
3/16/95	9	MINUTE ORDER of 3/16/95 by Hon. Ruben Castillo: Status hearing set for 04/24/95 at 9:30 a.m. Parties to file a joint status report by 04/19/95. Plaintiff to notify all other parties of the court's order. (See reverse of minute order).

		Mailed notice (jmp) [Entry date 03/17/95]
4/19/95	10	JOINT STATUS REPORT by plaintiff Kimberly B Ellerth, defendant Burlington Ind Inc (jmp) [Entry date 04/20/95]
4/24/95	--	SCHEDULE set on 4/24/95 by Hon. Ruben Castillo: Status hearing held and continued to June 19, 1995 at 9:30 a.m. Discovery cutoff set for July 24, 1995. Pretrial order to be filed by August 7, 1995. Mailed notice (ro)
6/19/95	—	SCHEDULE set on 6/19/95 by Hon. Ruben Castillo: Status hearing held and continued to 9/19/95 at 9:00 a.m. Discovery Ordered closed on 9/15/95. Plaintiff to disclose any expert witnesses pursuant to Rule 26(a)(2) by August 31, 1995. Defendant to disclose any expert witnesses pursuant to Rule 26(a)(2) by September 29, 1995. No notice (ro)
9/18/95	11	MOTION by defendant Burlington Ind Inc for summary judgment; Notice of motion (jmp) [Entry date 09/20/95]

9/18/95	12	MEMORANDUM OF LAW by defendant Burlington Ind Inc in support of motion for summary judgment [11-1] (jmp) [Entry date 09/20/95]
9/18/95	13	RULE 12 Statement of material facts as to which there are no genuine issues by defendant Burlington Ind Inc (jmp) [Entry date 09/20/95]
9/18/95	14	APPENDIX filed by defendant Burlington Ind Inc in support of motion for summary judgment [11-1] (Attachments) (Exhibits) (jmp) [Entry date 09/20/95]
9/19/95	15	MINUTE ORDER of 9/19/95 by Hon. Ruben Castillo: Status hearing held; continued to 9:00 11/13/95. Plaintiff's response to defendant's motion for summary judgment [11-1] due 10/19/95. Defendant's reply to answer brief due 11/02/95. Motion for summary judgment [11-1] will be taken under advisement and the court will rule by mail. Mailed notice (jmp) [Entry date 09/20/95] [Edit date 02/28/96]

10/19/95	16	RESPONSE by plaintiff Kimberly B Ellerth to defendant's Rule 12((M) statement of material facts (jmp) [Entry date 10/20/95]
10/19/95	17	ANSWER BRIEF by plaintiff Kimberly B Ellerth in opposition to defendant's motion for summary judgment [11-1] (jmp) [Entry date 10/20/95]
10/19/95	18	APPENDIX filed by plaintiff Kimberly B Ellerth regarding answer to motion for summary judgment [17-1] (Exhibits) (jmp) [Entry date 10/20/95]
10/20/95	19	MOTION by plaintiff Kimberly B Ellerth for leave to file answer brief in excess of 15 pages instanter; Notice of motion (jmp) [Entry date 10/23/95]
10/20/95	20	MINUTE ORDER of 10/20/95 by Hon. Ruben Castillo: Plaintiff's motion for leave to file answer brief in excess of 15 pages instanter [19-1] is granted. Telephoned notice (jmp) [Entry date 10/23/95]

11/3/95	21	MOTION by defendant Burlington Ind Inc for leave to file reply brief in excess of 15 pages instanter; Notice of motion (jmp) [Entry date 11/06/95]
11/3/95	22	REPLY BRIEF by defendant Burlington Ind Inc in support of its motion for summary judgment [11-1] (jmp) [Entry date 11/06/95]
11/3/95	23	AFFIDAVIT of Salvatore V. Porio regarding motion for summary judgment [11-1] (Attachments) (imp) [Entry date 11/06/95]
11/3/95	24	MINUTE ORDER of 11/3/95 by Hon. Ruben Castillo: Defendant's motion for leave to file reply brief in excess of 15 pages [21-1], instanter [21-2] is granted. Telephoned notice (imp) [Entry date 11/06/95]
1/18/96	25	MEMORANDUM, OPINION, AND ORDER (jmp) [Entry date 01/19/96]
1/18/96	26	MINUTE ORDER of 1/18/96 by Hon. Ruben Castillo: Enter memorandum opinion and

		order. Defendant's motion for summary judgment [11-1] is granted in its entirety. Judgment is entered in favor of the defendant and against the plaintiff Kimberly Ellerth. This action is dismissed with prejudice, both sides to bear their own costs. Terminating case Mailed notice (jmp) [Entry date 01/19/96]
1/18/96	27	ENTERED JUDGMENT (imp) [Entry date 01/19/96]
2/15/96	28	NOTICE OF APPEAL by plaintiff from judgment entered [27-1], from motion minute order [26-2] and from order [25-1] ($105.00 PAID) (df) [Entry date 02/16/96]
2/15/96	29	DOCKETING STATEMENT by plaintiff regarding appeal [28-1]. (df) [Entry date 02/16/96]
2/16/96	--	TRANSMITTED to the 7th Circuit the short record on appeal [28]. Mailed notice to all counsel. (df)
2/20/96	30	ACKNOWLEDGEMENT of receipt of short record on

		appeal USCA 96-1361 (ip) [Entry date 02/21/96]
2/23/96	31	SEVENTH CIRCUIT transcript information sheet by plaintiff Kimberly B Ellerth (jmp) [Entry date 02/26/96]
2/29/96	--	TRANSMITTED to the 7th Circuit the long record on appeal no. 96-1361 consisting of one volume of pleadings and two volumes of loose pleadings. Mailed notice to all counsel. (df)

[END OF DOCKET: 1:95cv839]

Dear Pat,

The first thing I want to make clear to you is that you were absolutely right in hiring me. I have the intelligence, the drive and the enthusiasm to do anything I want. Allow me to tell you how I see the chain of events leading up to this.

I was hired by Betsy expecting to learn and grow from her. Betsy certainly knows her accounts, but it was difficult for her to give responsibility away. The only skills I gained from her were construction of fabric and who's who in the mattress world. I should have ended my career with the company there. When I learned of Patrick's resignation, I truly felt that this would be a great opportunity for me. It would have been, had Burlington treated me as the new person, Kim, instead of holding me up to Patrick for comparison. Please do not deny this because it is true. I am only speaking of the way Burlington treated me and not customers. They are in a class by themselves. To start it all off with, I heard that Ted called me arrogant. I know this is true.

To hear what he had to say about me was not surprising considering what had occurred in the past.

I know that Ted must have made your decision terribly difficult for you to make.

I started my job knowing full well, that Ted did not approve.

That was unsettling to begin with. The second mistake that Burlington made was waiting too long to hire me. Patrick had given six weeks notice of his departure. During the last two weeks, I was subjected to a crash course without files and

computer. The first week, let me remind you that we were all in San Francisco. This week, I simply learned what some of my customers looked like. The following week, Patrick and I were flying non-stop to meet more customers that I hadn't at ISPA. In between these flights, Patrick had to give me crash courses on what he had been doing for the last three years. Also Patrick had started his new job and was trying to waylay Jeffrey and train me. He did not have his mind completely on Burlington. Then he was gone. The computer was missing and so were the files that went along with it. I started the week of the truck strike, Burlington was tight on high-sley and were having problems with filling colors. On top of all that, I had to inform numerous customers that what they were currently running was going to be a drop. They were not aware of this until I told them in mid-April. At the sane time, I was trying to go on what I had, deal with Rosella, who clearly did not have the patience to tell me what she needed, nor was she happy about Patrick's absence. Meanwhile, I was spinning my wheels trying to gain ground. My new customers were understandably concerned with a new person and did not believe me when I would explain why we were delinquent on the high sley product that contained a filling color that was in demand. Naturally, they did not have faith in me. I do not blame them a bit. Then there were the customers who outwardly admitted that they did not believe a woman could handle this job and were testing me to the limits, and this is not including the people who are just difficult to handle. My lap top finally arrives after three and a half weeks on the job. My samples are not complete and many need replacing because they are dirty. There was a lot to handle.

Pat, you then come out to visit me. If you remember, we only had one day in the office and we didn't even review

anything. We were too busy on the phones. It was at this time that you told me that there was a learning curve and I should give myself 6 months to learn. That would have been great, had Burlington given me a chance to learn while supporting me and giving me a helping hand when I started to drown. Instead, more water was put on my head to help my drowning along, Pat, you also told me that I would have to do things my way in order to get comfortable. The customers would have adapted, people are animals, we adapt. It would have taken a simple call on your part to acknowledge these changes and phoned our customers to assure them that everything would be fine. That you were there to help me, and would be watching. They would have adapted. During our lunch at John's Garage you reviewed all of my weaknesses so far. I can accept that, but Pat, you forgot one important ingredient for a successful employee: PRAISE. There were many things that I was doing well. These were never covered. How is that for morale?

Meanwhile, back on the ranch. The natives were getting restless. They were even nit picking on things like, "Kim was calling me on Monday, instead of Friday" even though they did not ship until Wed. Little did I know that this person did not deal with suppliers on any other day than Friday. WOW, what a crisis. By, the way, did anyone mention that I did not place their orders as requested? I did everything in my power to make everyone happy.

Also, during this time, Patrick was calling a few customers just to say "Hi". That is more than fine since he had such good rapport win them. But this was not helping my rapport with them. There were certainly a few others that were whining about insignificant things.

I then went out with Dee who helped me greatly in organizing and she also discovered a few items that I was not aware of or were confused on. Such as many of my customers assumed they were on a release basis, when they should not have been and a few other items as such.

I also resented the fact that I was being covered up by you. You were saying that I did not have any sales experience. First, I had 8 mo. outside sales and many years of retail. We must not forget that Patrick had none. It was not my selling skills that should have been looked at, it was my training on systems. You also must not forget that up to this point I had exactly two weeks of training and that is being generous. Two weeks training and, BOOM, into a 5 million dollar territory you go.

I am not above criticism by any means, I did do a few things that any new person will do. In some instances, a few old salesman as well. What I was lacking, was training, support and understanding. Burlington only has Burlington to blame.

A few salespeople agreed that they could not see why I was being "picked on" so terribly. It was like a new kid on a playground with no parents to supervise.

I have taken a standing offer from a well known company. I will be trained extensively before being placed in a position. This is good to know. I would hate to go into anything with limited knowledge again.

Pat, I also think that you should look at the job performance memo you sent me. 1. No Praise 2. Being compared to Patrick 3. No support in the face of customers. Stroke 'em then Smack 'em. I believe this is what they recommend for

managers. Remember, even Patrick was new at one point and made mistakes. Please do not make this mistake again.

I will be receiving one more bill from the business line and the cellular line. I cut both lines off the day I quit. I would appreciate it if this expense report would be expedited along with the one in this folder. I have also enclosed my calling card and the travel card. I will be holding on to your laptop until I get my last expense check. This is for my own safety.

I wish you luck in the future.

Sincerely

/s/ Kimberly B. Ellerth

Kim Ellerth

Dear Pat, June 21, 1994

There is one more situation regarding my job that I think you need to be aware of. In my letter of resignation I explained why I had quit. You need to know the real reason. I briefly mentioned it in my letter, but I did not get into it because I was afraid to. Before I was hired, you and I spoke about the reasons why Ted didn't feel comfortable around me. I told you that he had said and done some sexually inappropriate things to me in the past. What I didn't tell you was that he had on two occasions patted my rear and everytime he saw me looked me up and down like a piece of meat. On my first trip to N.C. to train, Ted, Dan, his wife and I went out to dinner. When Dan dropped Ted and I off at the hotel, Ted invited me into the Fifth Season to watch the show. I went, but was very upset because he kept making sexual comments about the women on the stage. We got up to leave and as we were walking out, he patted my rear and said he could make my life at Burlington very easy, or very hard. I told him he wasn't acting very appropriately and he just laughed at me and walked away. Naturally, Ted was drinking as usual. There were several other occasions after that one that I continued to ignore. This is why Ted "couldn't put his finger" on why he did not want me to have the job.

I don't expect you to do anything about this because as I had been told before. Ted is just Ted. My entire time at Burlington, I had to ignore Ted and try to do what I needed to do in my job. But I finally had it when I spoke to Ted on the phone during my last weeks and he said to me, "This job must be hard for a woman like you." I replied, "like what?" He then said, "An attractive woman with great legs; you should wear shorter skirts" Ted made my life with Burlington unbearable.

I just thought you should know, although I'm sure you are not surprised.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KIMBERLY B. ELLERTH, Plaintiff,	)	
vs.	)	No. 95 C 0839
BURLINGTON INDUSTRIES, INC., Defendant.	)	

The deposition of KIMBERLY B. ELLERTH, called by the Defendant, for examination pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before TERESA VOLPENTESTA, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois at 77 West Wacker Drive, Suite 4900, Chicago, Illinois, on the 3rd day of May, A.D., 1995.

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for a little bit.
He asked me if I were married and
I said yes, I was, and he said, "Are you planning on

having a family," and I said -- knew that question was not appropriate but I said "No, we are not, because I was afraid that I would not be offered the position, and then he asked me if I were practicing to have a family.

* * *

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Q And then he asked you if you were married?

A Yes, sir.

Q And you said you were obviously?

A Uh-huh.

Q And then you said he asked you if you were planning on having a family?

A Correct.

Q Okay. Now, you said you knew that that was inappropriate?

A Correct.

Q Okay. Tell me what you mean by that.

A Because if I am not mistaken, it's - that is not -- a possible employer is not supposed to ask questions of marital status and a few other things that I can't recall at this moment, so I knew

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that that was not an appropriate question to ask.

Q Did you take offense at that?

A Yes, I did.

Q Did you say anything to him?

A No, I did not.

Q Okay.

A I was vying for a position.

Q What do you mean vying for a position?.

A I was hoping to get this position.

Q When you worked at Burlington, did you ever ask anyone if they were planning on having a family?

A I don't recall that I did.

Q Pardon?

A I don't recall that I did.

Q Well, when you say you don't recall if you did, are you suggesting that you may have but you don't remember it or that you don't think you did?

A I don't think I did.

Q Pardon?

A I don't think I did.
Q Because it would be inappropriate?

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A That's right.
Q Okay. Now, the next thing you said he said was he asked you if you were practicing to have a family?
A Yes.
Q What did you take that to mean?
A I took that to mean that if -- that we were -- if we were making love.
Q You and your husband?
A Yes.
Q How did you respond? What did you say?
A I didn't say anything at that moment. I didn't respond.
Q Okay. What -- all right. He said -- he asked you that question and you did not respond?
A That's correct.
Q What did he then next say?
A I don't recall what he said next. He paused for a moment, waited for my response.

Q And there was none?
A And there was none.
Q Okay. Did you maintain eye contact with him at that point?

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A No, I did not.
Q And I take it you took great offense at that question?
A Yes, I did.
Q Did you say anything to him?
A I was very humiliated but I did not say anything.
Q Okay. What was the next thing that was said? At this point it sounds somewhat awkward.
A I don't recall what was said next. I was so taken aback and so upset with the questioning that I don't recall.

* * *

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Q What do you mean they weren't work-related?
A They would be an off-colored joke. Most of the time they were off-colored jokes,

offensive jokes.

Q Okay. Now, would you just be standing there and he would walk up and tell you an off-colored joke? Is that what you are saying?

A I don't recall the situation surrounding it.

Q Well, there was more than one, was there not?

A Yes, there was.

Q Okay. So do you recall the circumstances surrounding any of them?

A During these brief discussions, they were in the office, brief jokes were in the office.

* * *

[p. 65]

Q More than four?

A Around four.

Q Around four. Okay. Now, did any of them occur during these two long meetings?

A Yes, they did.

Q Okay. Both long meetings?

A There was one during the long -- first long meeting and then several during the second long

meeting.

Q Several jokes in the second long meeting?

A Correct.

* * *

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Q There was no business purpose?

A No, there was not.

Q Okay. And an off-colored joke was told during it or was there more than one?

A Several.

Q How did they come up, if you recall?

A I was not involved in most of the conversations. It was Angelo and Ted telling jokes back and forth.

Q To each other?

A Yes.

Q And you were just sitting there?

A Correct.

Q Did they talk about anything else or did they just tell jokes to each other?

A I don't recall the conversation being anything more than just a good time for them.

Q Pardon?
A I don't recall anything else being said during that meeting.
Q How long were you at lunch with them?
A Approximately over an hour.
Q Okay. And were people drinking?
A Yes, they were.

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Q Were you drinking?
A No, I was not.
Q Who was drinking?
A Both Mr. Slowik and Angelo.
Q Okay. And do you recall what they were drinking?
A No, I do not.
Q Do you recall how many drinks they had?
A They had at least two apiece.
Q Did they appear to be intoxicated?
A Yes, they did.
Q Both of them?
A Yes.
Q Now, did you go to the restaurant with them or did you meet them there?

A We walked together.
Q All three of you?
A Yes.
Q Did they appear to be intoxicated on the way to the restaurant?
A No.
Q Did they have more than two drinks apiece?
A I suspect Ted may have had one more

[p. 70]

past the two.
Q He may have had three?
A Correct.
Q Is that right?
A Correct.
Q And Angelo only had two?
A That is what I recall.
Q Okay. And did they both appear to be intoxicated?
A Correct.
Q And how did that evidence itself to you?
A They were very loud. The jokes got

more offensive. Ted became red in the face, loud and obnoxious.

Q Okay. How long after you were in the restaurant did they start to become loud and obnoxious?

A Approximately 15 minutes.

Q Okay. After one drink?

A Approximately.

Q What do you mean, "approximately?"

A I don't know when they drank or at what time they did.

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Q Is there anything else on that?

A No.

Q Okay. Now, were these jokes of a sexual nature?

A Yes, they were.

Q Okay. Were they both telling them?

A I remember only Ted, although Angelo may have as well.

Q You specifically recall Ted?

A Correct.

Q Okay. How many of these jokes were

told?

A Well over ten.

Q Okay. When you say, "well over ten," what do you mean?

A I don't recall exactly how many but they were frequent and constant.

* * *

[p. 75]

Q Okay. Now, other than the loud and obnoxious offensive jokes, did anything else occur at that lunch?

A At one point during lunch, during one of the jokes, Ted reached over and rubbed my knee.

* * *

[p. 76]

Q Okay. And it was during one of the jokes that he reached over and rubbed your knee?

A That is correct.

Q Okay. Now, you were sitting between he and Angelo but you were sitting in a circle; is that right?

A Correct.

Q And Angelo would have been on one side

of you and Ted would have been on the other side of you?

A Correct.

Q And what did you do when he rubbed your knee?

A I pulled it away.

Q Pulled your knee away?

A Correct.

Q Did you say anything to him?

A No, I did not.

Q Did Angelo see him rub your knee?

A No, he did not.

Q It was under the table?

A Correct.

Q How do you know Angelo didn't see it?

A I don't know if Angelo -- I would

[p. 77]

assume that he didn't.

Q Now, did he only do that once?

A Correct.

Q Okay. How long into the lunch and into this series of jokes did he do this?

A Before the first hour was up.

Q Okay. And then you stayed for another half hour, 45 minutes after that?

A Approximately.

Q Okay. Where the joke telling got more raucous as time went on; is that right or wrong?

A It was consistent.

Q Okay. And when you pulled your leg away from him, you didn't say anything?

A No, I did not.

Q Did anything else occur at that lunch that you recall other than joke telling, and the inappropriate joke telling -- I assume you thought was inappropriate?

A Correct.

Q And his attempt to rub your knee. Did anything else occur during that lunch?

A No. The offensive joke telling and the knee rubbing was all that occurred during lunch.

* * *

[p. 79]

Q What do you recall specifically Ted saying?

A Nice legs. It was something cruder

than that.
Q I need to know as best you recall what it is he said.
A "You have got great legs, Kim. What do you think, Angelo?"
Q Is that as accurate a recollection as you have?
A Yes, it is.
Q Okay. What did Angelo say when he asked him that question?
A I don't recall exactly what Angelo said.
Q Did he say anything?
A I believe he did.
Q But you don't recall what it was?
A I don't recall.

* * *

[p. 81]

Q Okay. And now I asked you was he gaping or staring in any inappropriate way when he said that?
A When I turned back after the response, yes, he was staring at my legs.

Q When he said that, I take it you weren't looking at him; is that right?
A No, I was not.
Q And you turned around after he said it?
A Correct.
Q What happened then?
A I turned around and kept walking.
Q Okay. And were Ted and Angelo still telling each other jokes?
A Correct.

* * *

[p. 85]

the
Answers to the Interrogatories indicate that during the interview, No. 3 on Page 3, "During the interview, Slowik stared at Plaintiff in a sexual way which made Plaintiff feel very uncomfortable."
A Correct.
Q Can you describe what it is you mean when you said that?
Can you describe what you are talking about?
A There were times where he -- his

eyesight -- his eyes would move down to my chest
area for prolonged periods of time.
Q While he was talking or -
A Correct.

* * *

Did he say anything inappropriate
while he was doing that?
A I don't recall.
Q Okay. So you are saying he may have
said something inappropriate while he was doing

[p. 86]

that?
A Yes.
Q But you don't recall?
A I don't recall.
Q When you say, "for prolonged periods of
time," what do you mean?
A More than the average length of a
glance.
Q Okay. No. 4 on Page 3 says, "Also
during the interview," now this is the initial job
interview, "Slowik stared at Plaintiff's breasts and
legs."

A Correct.

* * *

[p. 87]

Q Were you sitting directly across from
him?
A Yes, I was.
Q Okay. Can you describe how he stared
at your legs?
A During the interview, I had my legs
crossed and they were out to the side, and during
the conversation he stared at my legs.
Q When you say, "off to the side," do you
mean off to the side of the table?
A Correct.
Q Now, was this -- were these separate
stares or were they just kind of -
A Just constant.
Q During the whole interview?
A Correct.

* * *

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Q Okay. Now, when you say he was loud
and obnoxious then, what do you mean?

A Loud conversation and joking with Dan and his wife.
Q Okay. What do you mean when you say, "joking with Dan and his wife?"
A They were just having fun.
Q Okay. Now, was Ted obnoxious?
A Yes.
Q In what fashion was Ted obnoxious?
A Very loud. He was giving the waitress a hard time.
Q What kind of a hard time was he giving the waitress?
A I don't recall exactly how he was giving her a hard time. It was not regarding the service.
Q It was what?
A Not regarding the service.
Q It was not regarding service?
A No.
Q Okay. What was it regarding?

* * *

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A I believe it was regarding her.

Q Okay. What do you mean by that?
A I don't recall exactly. I just remember thinking it was very inappropriate and offensive.
Q Okay. Was he making fun of -- was he giving her a hard time in a sexual way? Was he making offensive sexual comments to her?
A I don't recall.
Q Okay. What specifically do you recall about the conversation regarding the waitress?
A I just remember that he was giving her a very hard time, something regarding her personal self, not the restaurant.
Q Okay. But you don't remembe what it was?
A No, I don't.
Q Okay. Did it have to do with her appearance?
A Probably.
Q Now, when you say, "probably," I don't understand that.
A Well, that's what I would find offensive.

* * *

[p. 106]

Q Can you tell me what happened when you got back to the hotel?

A Ted invited me into the Fifth Season which is the bar of the Four Seasons Hotel.

Q That's the name of the bar?

A The Fifth Season.

Q Okay. And did you go in there?

A Yes, we did.

Q Okay. And was there entertainment in there?

A Yes, there was.

Q Okay. And what was the nature of the entertainment

A It was an all-women band.

Q What kind of bank, rock'n'roll band or dixieland band or what?

A No, it was a rock'n'roll band.

* * *

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tell me what transpired there, if anything inappropriate or offensive in any way?

A He was making comments about the women on stage. He was saying what nice breasts they had, what nice legs they had, aren't they nice, skimpy outfits.

Regarding the breasts, he turned to me and said, "You are a little lacking in that area, aren't you, Kim?"

Q And what did you say?

A I ignored it.

* * *

[p. 110]

Q What did you say?

A I was very tired, I was very humiliated and offended and I decided it was time to leave.

Q Okay. And so you just stood up and -

A Correct.

Q Did he stay in the bar when you left?

A No, he did not.

Q He left with you?

A Correct.

* * *

MR. CASEY: Q On the Answers to Interrogatories on Page 4, No. 9, it says, "In

Greensboro, North Carolina at the Four Seasons Hotel, in or around the summer of 1993 while Plaintiff was in Greensboro visiting the factories for training, Slowik told Plaintiff that she should 'loosen up' more." Do you recall that?

A Yes.

Q Now, where did that happen?

A That happened in the Fifth Season.

Q During this all-women band incident?

A Correct.

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Q Okay. And was -- can you tell me the context in how that came up?

A During his joking and offensive - sexually offensive remarks, and I didn't say anything and he told me that I should loosen up.

Q Okay. Now, what joking and sexually offensive comments are you talking about?

A About the women's breasts and about mine and about their outfits.

Q Okay. Now, in addition to that, was he also telling jokes?

A No, he was not.

Q Okay. So that when you say joking and offensive comments, that's what you are talking about?

A Correct, correct.

Q Okay. What do you mean by joking?

A Poking fun at the women.

Q Okay. About their physical attributes?

A Correct.

Q Okay. And somewhere in there he said to you, "you ought to loosen up?"

A Correct.

Q Can you describe any more specifically

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the context of that?

A During his inappropriate sexually offensive comments, he just kept saying it and I just sat there and I didn't say anything.

Q Okay. Now, No. 10 on Page 4 of the Answers to Interrogatories, it says, "In Greensboro, North Carolina at the Four Seasons Hotel in and around the summer of 1993 while Plaintiff was in Greensboro visiting the factories for training, Slowik told Plaintiff that he could make her job

'very hard' or 'very easy' for Plaintiff."

A That's correct.

Q Okay. Now, the next one says, No. 11 on Page 4 says, "In Greensboro, North Carolina at the Four Seasons in and around the summer of 1993 while Plaintiff was in Greensboro visiting the factories for training, after dinner Slowik told Plaintiff that he could make her job very hard or very easy for Plaintiff."

Is that the same thing or did he do it two different times?

A No, it was once.

Q It was once. okay. So these two paragraphs are describing the same thing?

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A Correct.

Q Okay. Now, was that in the lounge?

A That was outside of the Fifth Season.

Q Before you went in or after you came out?

A After we came out.

Q Okay. So this is after you decided you were going to bed?

A Correct.

Q And going to your room. And he was walking out with you?

A Correct.

Q And it was after he had told you you ought to loosen up?

A Correct.

Q What did he say?

A As we were walking out, he stopped in the lobby and turned to me and said, "You know, Kim, I could make your life very hard or very easy at Burlington."

Q And what did you say?

A I didn't say anything.

Q Did he say anything else?

A No, he did not.

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Q He just turned around and walked away?

A Correct.

Q Did he touch you in any way, shape or form at that time?

A No, he did not.

Q Pardon?

A No, he did not.
Q He just said that and walked away?
A Correct.
Q Now, No. 12 on Page 4 says, "In Greensboro, North Carolina at the Four Seasons Hotel in and around the summer of 1993 while Plaintiff was in Greensboro visiting the factories for training, after dinner Slowik stared at Plaintiff in a sexual way which made Plaintiff very uncomfortable."
Can you describe what you are talking about there?
A In the same manner as the interviews, prolonged locks at my breasts and legs.

* * *

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Was he talking about, you know, her breasts and her legs and things like that to her.
A I don't recall exactly what it was but it was something not waitress-related.
Q Can you be more specific? I mean, I understand it's not waitress-related.
A Unfortunately, I cannot be more

specific than that because I don't recall exactly what was said.
Q Do you think that if it was an offensive sexual nature you would recall it?
A I recall that I was very offended with what he said to the waitress, and I know the only way that I would be offended or embarrassed is if there was a situation where he was talking sexually offensive.
Q And you were offended and embarrassed?
A Yes, I was.
Q Okay. So then without remembering exactly what he said, is it fair to conclude that those were sexually offensive comments made directed at the waitress?

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A Yes.
Q Did Dan or Dan's wife say anything at that time?
A No, they did not.
Q They were sitting at the table with you?
A Correct.

Q And if it was loud enough for other people in the restaurant to have heard, it would have been loud enough for them to hear?
A Yes.
Q Okay. Okay. Let's go back to the - giving you all these little short names, the Angelo lunch in New York.
A Yes.
Q Can you tell me the nature of some of the jokes that were being -- what was said with as much specificity as you can?
A They were very sexually offensive. They were joking about breasts, sex acts, along those lines.
Q Okay. But I am going to ask you to be as specific as you can, because when you say sexually offensive, I mean, that's kind of a

[p. 119]

conclusion in your mind. I need to know exactly what it was they said if you can recall and the beat you can recall.
A I don't recall the jokes word-for-word.

I don't -
Q To the best of your recollection.
A To the best of my recollection, they were sexually offensive. They were discussing sex acts in various joking -- in various jokes.
Q Can you recall any one specific joke that anyone told at that table?
A No.
Q Not one?
A I don't remember jokes like that.

* * *

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Q Were they brief conversations?
A Yes, they were.
Q He would ask a question and you would answer it?
A Correct.
Q Okay. Would he tell any of these vulgar jokes on the phone during that time?
A No, but there were sexual innuendoes on the phone, all phone conversations.
Q All phone conversations?
A (Indicating.)

Q Pardon?
A All phone conversations.
Q Now, you got to tell me what you mean there were sexual connotations in all phone conversations. What did he say?
A There are so many.
Q I am sure -- I don't know, but tell me what they were.
A "How are those legs of yours, Kim; ha, ha, ha."
I mean, it just upset me and humiliated me so much it's so difficult to remember

[p. 133]

these little times.
Q When you say "little times," what do you mean?
A The little short conversations that I would hold with him.
Q Okay. Do you recall any specifically other than how are your legs, Kim?
A I know there was one more joke about practicing having a family.
Q There was a joke about that?

A A phone. "How is your husband? Fine. Are you still -- are you practicing having a family?"
Q And what would you say or what did you say?
A I never responded.
Q You never responded at all?
A No.
Q Ever?
A Not during those phone conversations.

* * *

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Q Tell me, Ms. Ellerth, about the incident in the fall you just referred to. What happened?
A We were preparing -- I was preparing

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for a meeting.
Q With whom?
A Just me. I was doing it in the sample room. I was preparing in the sample room by myself.
Q Okay. In that -- you were preparing for a meeting with whom?

A I don't remember what client it was.
Q But it was a client you were preparing for, not an in-house meeting?
A Correct.
Q Okay.
A And I was getting samples out. There were always a lot of samples and I was down on the floor folding samples.
Q Fabrics?
A Fabrics, and Ted walked in with Laura Peffal. They had just come in from a flight and they walked past the door -
Q She works in New York?
A Yes, she does.
Q Okay.
A And they walked in, he passed the sample room and said -
Q Did he come into the sample room?

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A No, he did not.
Q Okay.
A And he remarked, "On your knees again, Kim" and kept walking.

Q Okay. Was that the entire incident?
A That incident, yes.

* * *

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Q All right. What happened?
A He was in for another meeting and he was using my office to make his phone calls, and as I walked in he made a comment like, "It's nice to have my butt where your butt was, Kim."
Q Okay. I take it he was sitting in your chair?
A Correct.
Q Is that what he was referring to?
A Correct.
Q Do you recall when that was? Can you place it around any other event that you can more accurately tell us?
A He was in for a meeting, fall of 1993.
Q Okay. Around the time of this "on your knees again, Kim" comment?
A Correct.

* * *

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Q From St. Patrick's Day -- from the St. Patrick's Day initial job interview through this time period in the fall of '93, did you ever say anything to Ted Slowik about things he was saying to you?

A I know that I had enough guts to say it was inappropriate one time.

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Q When was that?

A I don't recall.

Q What was the incident?

A I don't recall that either.

Q Where was it?

A I don't recall.

Q What did you say?

A I said I thought that whatever he was saying was inappropriate.

Q But you don't know what it was?

A No, I do not.

Q You don't know when or where?

A I just remember I had enough guts to finally say something to him.

Q Was anyone else present when you said it?

A No, they were not.

Q You remember that, though?

A Yes, I do.

Q And you don't know if you were in your office?

A I cannot recall.

Q Was it on the phone?

A I cannot recall.

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Q Do you remember anything about the context of it?

A It was always a sexual innuendo or a comment.

Q Not always. About the time you said I think it's inappropriate, that specific time?

A A sexual innuendo.

Q Do you remember that?

A Because -- any time that he said something to me it was always a sexual innuendo that was embarrassing and humiliating, and I finally had enough guts to tell him that it was inappropriate.

Q And you don't remember what it was?
A No, I don't.
Q Let me ask you this: Is there any time he talked to you that he didn't make a sexual innuendo, any time?
A I can't recall.
Q You can't recall if he ever had a conversation without a sexual innuendo?
A He upset me so much every time he called that I don't remember having a conversation without him saying something to me.

* * *

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Q Well, tell me about the party. What happened?
A There was -- it was at Morton 's. Customers were there, drinks were being served. My husband was there, spouses were invited, and during the evening, he came up to my husband, patted him on the shoulder and said, "You are a lucky man to have a woman like that," referring to me.

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Q Okay.

A Excuse me. I need a tissue.
Q Sure. Were you there when that was said?
A No, I was not.
Q When were you told about that comment?
A After the holiday party.
Q After you left?
A Correct.
Q Was there any -- I take it it was Slowik talking to your husband?
A Correct.
Q Was anyone else there that you know of?
A I don't believe so.
Q Okay. And can you tell me how -- what the interpretation was that you and your husband put on that comment?
A That he was a lucky guy to have a woman like that.
Q Well, that's what he said. What interpretation did you put on that?
A It was just offensive.
Q Why?
A Because I didn't think that was

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appropriate to tell my husband. -

Q Why?

A It just wasn't. It was -- it didn't need to be said. "A woman like that." That's pretty condescending.

Q You took it as a condescending comment?

A Condescending and sexually offensive.

Q Tell me what is in there that is sexually offensive to you in that comment.

A Well, the comment itself. He could have said Kim -- you are fortunate to have a wife like Kim, she is a hard worker, anything work-related but "a woman like that." The connotation behind that, I can only guess on.

Q Well, I am asking you to do that because you take offense at it and I want to know what offense you took?

A That I had a very -- very nice dress on. He was looking at me from -- my husband said he wasn't looking at my face. He was looking at my legs and my rear end when he said it. That's what

makes it sexually offensive.

Q So putting it within the context of

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what he said is what gives it its meaning?

A Correct.

* * *

Q Did anything else occur at that party?

A Yes, it did.

Q Tell me about that.

A An Ted was walking by me, he patted my

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rear.

Q Was that before or after this comment?

A I believe it was after.

Q After. Was Slowik drinking?

A Yes, he was.

Q Do you remember what he was drinking?

A No, I cannot.

Q Do you have any idea how much he had been drinking?

A No, I cannot.

Q Do you remember what he was drinking?

A No, I do not.

Q Who were you standing with when he did that?
A I cannot recall.
Q Was your husband standing there?
A No, he was not, but he saw.
Q Pardon?
A He saw the incident.
Q He saw that happen?
A Yes, he did.
Q And I take it you discussed that after you left, too?
A Yes, we did.

* * *

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Q What happened?
A I was asking Mr. Slowik about a customer and it was a difficult situation.
Q Tell me about it.
A I don't remember the specific work-related incident with this but he replied, "It must be hard for a woman like you, Kim, to have - hard for a woman like you to have a job like that," and --

Q What did that mean?
A And then he followed up by, "a woman with great legs."

* * *

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Q Okay. Tell me what he said again.
A "It must be difficult for a woman like you, Kim to have a job like that, a woman with great lets," something along those lines.
Q Okay. And what did you take that to mean?
A Why should my legs have any bearing on my work capability.
Q You think it was a gratuitous non-work-related comment?
A Yes, it was.

* * *

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Q Now, let's get to the March interview with Slowik, okay?
A Yes.
Q Okay. Now, what was the job you

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wanted?

A It was for a sales territory. It was taking over the Midwest territory.

Q Taking it over?

A Yes.

Q Okay. Is that a big -- would that be a big promotion?

A Yes, it was.

Q And would that mean -- if you got that job, okay, would that mean you would no longer work for Fitzgerald?

A That is correct.

* * *

Q Okay. Who would you then have worked for when you got the promotion?

A Pat Lawrence.

Q And what's his job?

A He took over Scott's position. Scott

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was the gentleman who reported to Ted. The sales representatives reported to Scott.

Q He was the national sales coordinator

director something?

A Correct.

Q And do we know his last name?

A I cannot recall Scott's last name.

Q Okay. And he was the number two man under Ted in the sales area?

A I don't know if it would be considered number two.

Q But he worked -- he reported directly to Ted?

A Correct.

Q Okay. And Pat Lawrence would report to him?

A Pat Lawrence would report to Ted.

Q And if you get the job, you would report to Pat Lawrence?

A. Correct.

Q Which would put you in the Slowik chain of command?

A Correct.

Q Now, when was the interview?

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A The interview with Ted was in March.

Q Okay. You had already had an interview with Lawrence?
A Yes, I had.
Q Okay. Where did that occur?
A In -- with Pat Lawrence?
Q Yes.
A Pat Lawrence, the interview took place in my office at the 333 South Wacker location.
Q Is that where Pat Lawrence worked?
A No, it was not.
Q Where did he work?
A He worked from his home in Texas.
Q In Texas?
A Yes.
Q Okay. So he interviewed you in your office?
A Correct.
Q Okay. And how did that interview go? Tell me about that. What happened?
A It went very well. We discussed my qualifications, what I had been doing, my motivation. That was it.
Q Did he indicate that he was supporting

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you for the promotion?
A Yes, he did.
Q At the interview?
A Yes, he did.
Q What did he say?
A He thought that I was -- I would be very -- I would be very successful at it and he had confidence in me.
Q Okay. Was this a new job that was being created?
A No. This was taking Patrick Crosson's position.
Q What was happening to him?
A He left to go to another company.
Q Okay. So there was a vacancy?
A Yes, there was.
Q Or there was going to be a vacancy?
A Yes, there was.
Q Had he already left?
A No, he had not.
Q And how long was the interview with Pat Lawrence?

A Approximately an hour.
Q Okay. And did you tell him about your

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concerns about Ted Slowik at that time?
A I was concerned that he called me
arrogant.
Q Did Lawrence tell you he called you
arrogant?
A Yes, he did.
Q What did he say?
A He said, "Ted called you arrogant."
Q And this is obviously -- and this was
at your interview with Lawrence?
A Correct.
Q And what did you say?
A I said that it figures -- I said, "It
would figure that he called me arrogant."
Q What did Lawrence say?
A We didn't discuss it any farther than
that.
Q Just dropped it?
A Yes.
Q You just said, "that would figure" and

dropped it?
A Yes.
Q Did you say anything to Lawrence then
about why you thought he would call you arrogant?

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A No, I did not.
Q Okay. And this is in February of 1994,
correct?
A Correct.
Q And you said not a word to him about
you thought he would call you arrogant?
A No, I did not.
Q Did you describe any of the history of
offensive behavior and comments that Slowik had with
you at that time with Lawrence?
A No, I had not.

* * *

Q Whose decision was it for that

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promotion? Was it Lawrence's or was it Slowik's?
A It was Ted Slowik's and Pat Lawrence
combined.
Q Okay. But Slowik was the boss?

A Yes, he was.
Q So would you say it was his ultimate decision?
A Yes, it was.
Q Where did the mid-March Slowik promotion interview take place?
A I am sorry?
Q The Slowik mid-March promotion interview take place, where?
A It took place at the Marriott Suites in Rosemont.
Q And that was the same place you had the initial job interview?
A That's correct.

* * *

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Q Tell me about -- tell me what happened at the interview as specific as you can recall.
A Well, he started off letting me know that he had his hesitations for hiring me.
Q Okay. Now, there is only two of you at this?
A This is correct.

Q Now, were you sitting at a cocktail table?
A No, we were sitting at the bar on the stools.
Q So sitting next to each other?

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A Correct.
Q Now, when you said he expressed his hesitancy, what did he say?
A That's exactly what he said. "I have my hesitations having you in this position."
Q Okay. And you said?
A And I confronted him and I said, "I heard you called me arrogant," and he said, "Yes, I did."
Q And you said?
A And I said, "Is it because I am not loose enough for you, Ted?"
Q And he said?
A He said, "Well, yeah -- he said yes.
Q He said yes?
A Yes, he did.
Q Okay. And then what happened?

A At --
Q Was the word loose your word, you used the word?
A I used it because he had used it on me before.
Q When?
A At the Fifth Season.

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Q Okay. In the -- the all-female band when you were leaving or getting ready to leave?
A Correct. And at that point he reached over and rubbed my knee again.
Q Right at that point?
A I don't recall if it was exactly at that point.
Q And what did you do?
A I pulled my leg away again.
Q And?
A And he went on discussing the job.
Q What did he say about the job?
A He was telling me it was hard work, that I was going to be traveling a lot; "isn't your husband going to miss you?"

Q What did you say?
A And I said, "My husband supports me in whatever I do," and I don't recall any more of the conversation than that.
Q How long did it go on?
A Less than 15 minutes.
Q And he said he had his hesitancy about you taking the job.
You asked him if it was because

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you weren't loose enough and he said yes.
He then rubbed your knee. He then started telling you that the job was going to be hard, you are going to travel a lot, won't your husband miss you?
A I don't remember if it was in that exact order, but these were the topics that were covered.
Q Anything else?
A Not at that time that I can recall.
Q What do you mean "not at that time?"
Was that your recollection of the whole interview?
A Correct.

14 Q How did he leave it with you?
15 A It was rather on a down note because I
16 was very embarrassed and humiliated again.
17 Q What?
18 A I was very embarrassed and humiliated
19 again and it was ended then when Pat Lawrence came
20 to the bar.

* * *

[p. 204]

1 Q How long after the Slowik interview at
2 the Marriott Suites?
3 A Approximately two weeks.
4 Q Okay. So it would have been around the
5 end of March then?
6 A Correct.

* * *

9 Q Okay. And who did you hear from?
10 A I heard from Ted.
11 Q Directly?
12 A Yes.
13 Q Okay. Now, the way it was left with
14 you was you were going to be hearing from Lawrence;
15 is that right?

16 A That's what I assumed.
17 Q Okay. And did Ted call or did he come
18 out to Chicago?
19 A He called.
20 Q From New York or you don't know?
21 A I don't know where he was.
22 Q Okay. And what did he say to you?
23 A He said, "Well, Pat wants to hire you
24 so you have an option. You can either stay with

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1 Betsy and take on some of her accounts or take this
2 sales territory.

* * *

[p. 206]

2 Q Okay. And did you make the decision
3 right then and there on the phone?
4 A Yes, I did.
5 Q And you said you wanted the new sales
6 job?
7 A Yes, I did.
8 Q Okay. What was the title?
9 A I don't recall. Everyone called it
10 something different on their business cards. Sales

representative, manager territorial -- I don't remember. They called it different things.

Q What did you eventually have put on your card?

A I don't think I ever had cards made.

Q Okay. What, if anything else, did Slowik say to you on the phone during that conversation other than Pat wants you and you have got your choice of the Betsy job or the other job?

A I know that he had made another one of his sexually inappropriate comments.

Q In this phone conversation?

A Yes.

Q What did he say?

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A I don't recall exactly what he said but I was crying when I hung up the phone.

Q Did he know you were crying? I mean, were you crying on the phone? -

A No, he did not.

Q Now, for -- correct me if I am wrong, but for a comment to cause you to start to cry, it had to be a very offensive comment, I would assume,

so can you tell me what it was?

A I cannot recall exactly what it was because every time I was on the phone with him I ended up most -- in tears.

Q Okay. When you say you don't remember exactly what it was, do you remember generally what it was?

A It was something sexually inappropriate because that's what he would say to me all the time that's what it was and that's what always broke me down into tears.

* * *

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Q Okay. And did anything happen during the San Francisco conference that you found offensive?

A For the first three or four days, he completely ignored me and didn't even say hello, and I believe on the last day I had to run to the bathroom because I was crying because he had said something sexually inappropriate to me again.

Q Okay. Let's back up a little bit now. When you say he completely ignored you, tell me.

Describe that.
A I would walk past and he wouldn't say hello. He wouldn't acknowledge my promotion, did not say anything to me.
Q Okay. And this is all within a few days of you just having gotten the promotion?
A That's correct.
Q Okay. So for three days he didn't speak to you at all?
A Correct.
Q Didn't say a word?
A Correct.

* * *

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Q And did anyone say why is this going on, why do you think?
A The conversation -- I didn't want the conversation to progress.
Q What do you mean, "progress?"
A I didn't want to get into the whole sexual harassment conversation so I dropped it.
Q Okay. People would say why is he doing this and you would say I don't know or -

A I don't believe they asked me that. You asked me why.
Q Okay. Were there any other conversations you had with Burlington people about the way Ted was treating you in San Francisco?
A Not San Francisco, no.
Q Okay. Now, where did the incident that caused you to have to run to the bathroom in tears, where did that happen?
A That was in the conference center.
Q Okay. And was that after this dinner we just talked about?
A Yes, it was.
Q And what did he say?

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A I don't recall exactly.
Q Well, generally, what did he say as best you can recall?
A Generally, it was something regarding my body in a sexually inappropriate way.
Q Okay. Is that your best recollection as specifically as you can get?
A Yes, it is.

Q Was it about your legs, do you know?
A I do not recall.
Q Was it an -- what was the context of it? How did it come up?
A Just in passing.
Q What do you mean, "just in passing?"
A Walked past me and said something to me and kept walking.
Q You don't recall what it was?
A No, I do not.
Q But it caused you to -
A Run to the bathroom.
Q To run to the bathroom?
A Yes.

* * *

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Q He was passing by you when he said it; is that correct?
A He was passing by.
Q Did he stop to talk to you?
A Just briefly for the comment.
Q Okay. Do you recall what the comment was?

A I have. I have recalled. It was -- I don't recall exactly the comment, but it was something regarding my "ass".
Q What did he say as best you recall?
A I don't recall exactly but I know that he referred to my back end as my ass.

* * *

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Q Describe what that means, will you, please? please?
A When he would stare at my back end or my chest or my legs for a long time.
Q I'm talking specifically about the incident in San Francisco when he made a comment about your rear end, what specifically did he do?
A He looked for a prolonged period of time at my back end.
Q Was he standing in front of you or behind you?
A. In front of me.
Q. Face-to-face?
A. A little off to my right or my left. I can't recall.

Q. And how long did that take place?
A. Could you rephrase that?
Q. How long did he stare at you?
A. He stared for approximately five seconds.
Q. So he did stop when he was passing by you?
A. That is correct.

* * *

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Q. Is there anything about that telephone call that you remember?
A. Yes, I do.
Q. Can you tell me what it is that you remember?
A. I recall that he told me a joke, a very offensive joke about blonds, a limo and sex.

* * *

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Q. Other than your recollection that he told you a joke about -- that it had something to do with blonds, a limo and sex, is there anything else about that phone call that you recall?

A. No, I do not.
Q. After San Francisco other than that telephone conversation, did you have any other conversation with Ted Slowik?
A. Yes, I did.
Q. When?
A. Approximately April or May.
Q. It was on the telephone?
A. Correct.
Q. Where were you?
A. I don't recall.
Q. Was it before or after the blond and the limo joke?
A. I don't recall.
Q. Can you tell me what it is you do recall

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about that telephone conversation?
A I recall that at the time I was getting permission, special permission for a customer of mine so that I may print a color copy of their logo so that they could see the logo in color on paper and then see it actually woven in a fabric before they purchased it.

Q Okay. That's what the conversation was about?
A That was the beginning of the conversation.
Q Did you call him or did he call you?
A I don't recall.
Q When you say that was the beginning of the conversation, what do you mean?
A That was how the conversation started out and --
Q Stop there for a minute. When you say started out, you mean you were requesting permission to do that?
A That is correct.
Q Go on. I'm sorry.
A And at that point Mr. Slowik said to me something along the lines of I don't have time for

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you right now, Kim, unless you're telling me -- unless you want to tell me what you're wearing.
Q What did you say?
A At that point I said I had to go and I hung up.

Q Did you ever get permission to do what it is you sought to do?
A I telephoned the following day.
Q Telephoned who?
A Or I had a telephone conversation with Ted the following day or the day after that. I don't recall.
Q So either the day after or two days after that conversation you had another conversation with Slowik?
A Correct.
Q Okay. And what was that about?
A I was requesting permission again because I did not get a response the first time.
Q Okay. To put this logo into the fabric?
A Correct.
Q Okay. And?
A And at that point he told me no, that I did not have permission to do that and said to me

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something along the lines of are you wearing shorter skirts yet, Kim, because it would make your job a whole heck of a lot easier.

Q When did this occur as best you recall?
A In May.
Q Early May or late Nay?
A I believe it was late May.
Q Why do you believe it was late May?
What is it about it that refreshes your recollection?
A Because that was the conversation that I realized that I was not going to be going forward in my job and this sexual harassment was going to continue by Mr. Slowik.
Q When you say not going forward in your job, what do you mean?
A Meaning that I would be declined over and over again for special permission to do special projects for customers.
Q So you interpreted I take it that if you don't get special permission to do things that you are not going forward in your job; is that correct?
A That is correct.
Q When he suggested that shorter skirts

* * *

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Q Why did you call him rather than Pat Lawrence who you worked for?
A Because Rich was the gentleman who was ultimately responsible for C & E.
Q Now, did he work above or below Pat Lawrence in the chain of command?
A I believe they were equal.
Q And when you called Rich and asked -- why did you call Rich?
A To discuss this special project that we were going to be doing with C & E.
Q And this was embroidering the logo into a fabric?
A That is correct.
Q As a sample?
A That is correct.
Q What did Rich tell you?
A He told me that we would need to speak to Ted or specifically I would need to speak to Ted.
Q Did he say we need to speak to Ted or did he say you had to speak to Ted?

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A I believe it was I had to speak to Ted.
Q And that's when Ted rejected the request after the second time you called him?
A That is correct.
Q And the only thing he said the first time you talked to him was I am too busy to talk to you now unless you tell me what you're wearing; is that correct?
A Yes, it is.
Q Yes?
A Yes.
Q Did you take his comment about what you're wearing to be offensive?
A Yes, I did.
Q Can you tell me in what manner you understood that to be offensive?
A In a normal business conversation one would not ask someone of the opposite sex what they were wearing on the other end of the phone.
Q Okay. Do you interpret everything that doesn't occur in a normal conversation to be offensive?

A No, I do not.
Q. Will you tell me, please, what there was

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about what are you wearing that you took to be offensive?
A It shouldn't matter what I was wearing and if my answer was not going to be or my question was not going to be answered unless I told him what I was wearing it's very inappropriate.
Q And you took offense at it because you felt it was inappropriate?
A Yes, I did.
Q Pardon?
A Yes.
Q Is there anything else about it that you deemed offensive other than what you have just said?
A I just found it very offensive.
Q I understand that. Is there anything else about it that you found offensive other than what you just said?
A Yes, but I am having trouble putting it into words.

Q Well, take your time.
A I suspected that he wanted me to tell him that I was wearing a nighty or something, that is how I took that conversation to mean.

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Q You interpreted his comment about tell me what you're wearing to mean that he wanted you to tell him you were wearing a nighty or something like that?
A Or a short skirt that he seems to like or something that would give him a little thrill during the day.
Q But that was your interpretation of it?
A That is correct.

* * *

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Q Sometime within a day or so you called Slowik back; is that correct?
A That is correct.
Q And he denied you permission to do the special project?
A That is correct.

Q As best you recall can you tell me exactly what you said and what he said in the second conversation to the best of your recollection?
A I tried to explain to him why I needed this project done and he said no and then asked me am I wearing shorter skirts yet because it would make my job a whole heck of a lot easier.
Q What did you say?
A I don't recall.
Q Did you say anything?
A I may have said I had to go and hung up.
Q This is in the latter part of May; is that correct?
A That's correct.

* * *

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A I was telling him ways that I thought that I could improve upon what Patrick Crosson had been doing.
Q And did Patrick Lawrence in your opinion seem to think it was a good idea?
A Yes, he did.
Q Did he tell you that?

9 A Yes, he did.
10 Q Did you have any other conversation
11 during that April and May period that you were in
12 your new job with Patrick Lawrence regarding your 13
job performance?
14 A No, there was not.

* * *

[p. 277]

22 Q Prior to your leaving the
23 employment at Burlington, did Patrick Lawrence who
24 was your immediate supervisor ever criticize your job
[p. 278]
1 performance?
2 A No, he never criticized my job
3 performance.

* * *

7 Q Did he ever point out to you what
8 he perceived to be shortcomings in your job
9 performance to your knowledge?
10 A He pointed out later on some items that
11 could possibly improve my performance.
12 Q When you say later on, what do you mean?
13 A It was in May.

* * *

[p. 280]

12 Q And can you tell me the substance of
13 that conversation?
14 A I believe we were continuing discussing
15 how I could change ways or varying ways of
performing
16 than Patrick and I know that he mentioned a few
17 things that I could change from what I was already
18 doing.
19 Q He being Lawrence?
20 A Correct.
21 Q What kinds of things?
22 A I don't recall specifically.
23 Q Did you interpret his comments as
24 criticisms?
[p. 281]
1 A Yes, I did.
2 Q Pardon?
3 A Yes, I did.
4 Q Did you interpret his comments as
5 pointing out shortcomings in your performance?
6 A At that point, no.

Q When you say at that point no, what do you mean?
A At that moment of the conversation I did not.
Q Did you later?
A Yes, I did.
Q When did you later put that interpretation on the conversation?
A When Patrick Lawrence wrote me a letter.
Q Was that letter a follow-up to the conversation at John's Garage?
A It was not a follow-up to that conversation, no.
Q Do you know what triggered him sending you a letter regarding your job performance?
A To the best of my knowledge I believe there were, from what I understand, a couple of customers who didn't feel as if I were paying enough

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attention to them.
Q. What do you mean not paying enough attention to them?
A. That I was ignoring them.

Q. And how many customers do you understand were complaining that you were ignoring them?
A. I believe it was about two.
Q. And how do you understand they claimed you were ignoring them?
A. I don't understand how they claimed that I was.

* * *

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Q. Now, if you read the last sentence of the first paragraph it refers to a phone conversation that you had four days earlier, do you recall that?
A. No, I do not.
Q. Do you see the reference there?
A. Yes, I do.
Q. To the 18th?
A. Yes, I do.
Q. Do you recall that telephone conversation?
A. No, I do not.
Q. Do you have any memory of having a telephone conversation with Patrick Lawrence some time in the middle or the end of May regarding your

job performance?
A. I don't recall a telephone conversation at all with Pat Lawrence regarding my job performance.

* * *

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Q. Now, that relays to you, does it not, a complaint regarding the not returning of phone calls; is that right?
A. That is correct.
Q. And it refers to both complaints from customers and other Burlington employees, doesn't it?
A. That is correct.
Q. And in it he points out that not returning a call or returning it late is inexcusable, isn't it?
A. That is what it says.
Q. Do you recall in addition to this memo having discussed that with Patrick Lawrence?
A. I never discussed this with Patrick Lawrence on the telephone.

* * *

[p. 285]

You are now saying you never discussed it with him on the telephone, not that you don't remember discussing it; is that correct?
A. To the best of my recollection I never discussed this with Patrick Lawrence on the telephone.
Q. All right. Did you discuss the not returning of phone calls with Patrick Lawrence at John's Garage?
A. Yes, I did.
Q. And did he tell you that there were complaints from both customers and other Burlington employees about the lack of responding to phone calls?
A He discussed approximately two customers that were complaining.
Q Did he tell you other Burlington employees were complaining about not returning phone calls?
A Yes, he did.
Q And who did he tell you was complaining?
A A gentleman by the name of Scott.

Q Scott?
A Scott?

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Q. Who is Scott?
A. Scott is -- I don't recall his job title.
Q. Where does he work?
A. New York.
Q. And Lawrence told you that Scott complained that you didn't return his phone call?
A. That is correct.
Q. And you recall two other customers?
A. Approximately two.
Q. Who were they?
A. I don't recall.
Q. Now, did you get this memo before or after you had your conversation with Patrick Lawrence on the train?
A. This was after.

* * *

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Q. Now, in the third full paragraph of Deposition Exhibit 2 Patrick Lawrence wrote that he

felt you were not on the job long enough nor do you have enough experience to begin changing systems in dealing with customers, doesn't it?
A. That is what it says.
Q. Pardon?
A. That is what is written.
Q. Now, did you interpret that as him having changed his mind from the conversation you had with him on the train?

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A. Yes, it is.
Q. Is this the first you knew that Patrick Lawrence thought you were too inexperienced to be changing the patterns of dealing with customers?
A. That is correct.
Q. Now, the first sentence says that you had a discussion about deviating from patterns Patrick had established; is that right?
A. That is correct.
Q. And up until you got this you thought that he approved of your changing of patterns?
A. That is correct.
Q. Okay. Did you call him and tell him

that --
A. No, I did not.
Q. -- what is going on here, I am getting mixed signals from you?
A. I did not.
Q. In your discussion with Patrick Lawrence at John's Garage, did Patrick Lawrence tell you that customers felt you weren't paying enough attention to detail?
A. I don't recall.
Q. Prior to receiving this memorandum, do

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you recall any conversation with Patrick Lawrence, whether in person or on the phone, where he told you that customers felt you weren't paying enough attention to detail?
A. I don't recall.
Q. Do you recall him having said this in this memorandum as you sit here now?
A. Yes, I do.
Q. Did you have any other discussion with Patrick Lawrence regarding his comment that customers felt you weren't paying enough attention to detail?

A. No.
Q. Pardon?
A. No.
Q. You had no other conversation with him about this?
A. No.
Q. Other than getting this memo?
A. Correct.
Q. After you got Deposition Exhibit No. 2, did you get in touch with Patrick Lawrence regarding the substance of what is in Exhibit 2?
A. No, I did not.
Q. Did Patrick Lawrence ever tell you that

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several major customers don't perceive that you are concerned about them and their business?
A. No, I don't recall that.
Q. Let me direct your attention to the last paragraph of Deposition Exhibit No. 2 and would you tell me if that refreshes your recollection regarding whether or not he told you several major customers don't perceive that you were concerned about them and their business?

A. I was only aware of this after this letter was -
Q. I'm sorry, I can't hear you.
A. I was only aware of it after I received this letter.
Q. Okay. Now, the last sentence of the first paragraph says that the matters contained in Exhibit 2 are the same matters he discussed with you by phone on the 18th, do you see that?
A. I see that.
Q. Okay. Do you have any recollection of having discussed any of these matters with Patrick Lawrence on the phone?
A. No, I do not.

* * *

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Q. Would you describe for me what you perceived your relationship to Pat Lawrence to be? Was it a good working relationship?
A. Yes, it was.
Q. Up until the time you got this memo did you believe he was satisfied with your job performance?

A. That is correct.
Q. Does this memo come as a surprise to you?
A. It did.
Q. Were you shocked?
A. Yes, I was.
Q. Were you disappointed?
A. I was not disappointed. I wanted to work to make it better if this is what the feeling

[p. 295]

was.

* * *

MR. CASEY: Q. Ms. Ellerth, prior to the time that you completed your job -- Prior to the time you left your job or terminated your employment at Burlington Industries, did you ever determine from Pat Lawrence or anyone else who the major customers of yours were that were complaining about your lack of concern regarding them and their business?
A. Yes, I did.
Q. Who were they?
A. I believe it was a plant called Milton

Johns and a company by the name of Therapedic.
Q. Where are those two companies located?
A. Milton Johns is in Chicago and
Therapedic is in Rock Island.
Q. Now, if you never discussed Exhibit 2

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with Patrick Lawrence, how did you determine who
those customers were?
A. I asked Donna Thibideau if she had
received any conversations of complaints.
Q. And she told you she had?
A. Yes.
Q. From those two?
A. Correct.
Q. Do you know if there were any others?
A. Not that I can recall.
Q Now, why would you ask Donna Thibideau
and not Patrick Lawrence?
A Because I wanted Donna Thibideau's
opinion because she speaks with the customers. She
is the customer service manager and she speaks to
customers every day.
Q But she wasn't your supervisor, was

she?
A. No, she is not. No, she was not.
Q When was your last day of work at
Burlington?
A I believe it was the last day of May
1994.
Q May 31st?

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Q. On June 1st you just didn't show up to
work; is that right?
A. No, that is incorrect. I left a message
with Pat Lawrence on his answering machine and
followed it up with a letter.
Q. What message did you leave on his
answering machine?
A. That as of today, whatever that day
was
Q. May 31st?

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A. I believe it was May 31st. That I was
quitting.
Q. And you followed up with a letter?
A. Yes, I did.

Q. Is that all you said in the phone conversation -- on the phone message?
A. I don't recall exactly what I said.
Q. That was the substance of it though?
A. Correct.
Q. How long later did you write the letter that you followed up with?
A. I believe it was that day.
Q. Pardon?
A. I believe it was that day that I quit.
Q. May 31st?
A. I don't recall.

* * *

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Q. Okay. In the middle and toward the end of the second paragraph there appear to be blank spaces, do you see that?
A. Yes.
Q. Is that the condition that this letter was in when you sent it?
A. Yes, it is.
Q. And can you tell me why you typed it the way you typed it?

A. That was a full paragraph and I whited out that white space with white out.
Q. You whited it out?
A. Correct.
Q. Why did you white it out?
A. Because I was explaining Ted's sexual harassment underneath that white out and my husband advised me not to leave it in there.
Q. Was your husband at work with you that day?
A. No, he was not.
Q. Well, when did you talk to your husband about whiting it out if you sent this on your last day at work and you faxed it?
A. I worked from my home and my husband

* * *

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what is whited out after the word true in that sentence?
A. I can't read all of the words behind here.
Q. Tell me what you can read.

* * *

THE WITNESS: A. "What I did not want to mention to you was the fact that Ted had harassed me in the past and I simply ignored him to save my job.

MR. CASEY: Q. Is that that full sentence?

A. Yes, it was.

Q. Pardon?

A. Yes.

Q. Now, who whited this out?

A. I did.

Q. And you agree, do you not, that Mr. Lawrence never received a copy of this letter without the white outs?

A. That is correct.

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Q. Now, can you tell me what is whited out, if you can, beginning at the end of Line 12 and going into Line 13 in the second paragraph following the word past?

A. "Needless to say these incidences could be seen as sexual harassment."

Q. What incidents?

A. All of the incidences that I have testified to.

* * *

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Q. Now, let's go to Line 14, Paragraph 2 and if you can, can you tell me what was typed in after the word -- I'm sorry, what was whited out after the word make?

A. "What a shame that one man can have such an influence."

Q. What do you mean by that?

A. Pat Lawrence was deciding whether or not to hire me and Ted had say in my hiring and made Pat's decision difficult.

Q. Who told you that?

A. Pat Lawrence.

Q. When did he tell you that?

A. At time of interviewing.

Q. Before you got the job?

A. Correct.

Q. Before you even interviewed Ted Slowik, isn't that right?

A. It was before my hiring.

* * *

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Q. Would you please give me a list of every person at Burlington Industries who you told about the conduct of Ted Slowik of which you are now complaining?

A. At Burlington Industries?

Q. That's correct.

A. Patrick Crosson.

Q. When did you tell him?

A. I told him during the last week of our training.

Q. Of our training?

A. Of my training for the new position.

Q. Which would have been around the end of March of 1994?

A. Correct.

Q. You told him during that week of training?

A. Yes, I did.

Q. Which was after San Francisco; is that

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correct?

A. Correct.

Q. The week after San Francisco?

A. The week after San Francisco.

Q. So that's when you told Patrick Crosson?

A. Correct.

Q. He was already leaving the company at that point?

A. Correct.

Q. In fact, he had already started working at his new job, hadn't he?

A. Yes, he did. Brett Schneider.

Q. Who is Brett Schneider?

A. He is a sales representative.

Q. That would have been a job the same as your job?

A. Correct.

Q. When you got your promotion?

A. Correct.

Q. So he would have been an equal to you?

A. Correct.

Q. When did you tell Mr. Schneider?

A. Sometime during the last two weeks of my employment.

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Q. But he was in no way a supervisor of yours?
A. No.
Q. He was a peer?
A. Correct.
Q. Who else?
A. And I believe that everyone else that I referred, even referred that Ted had done anything inappropriate I have testified to during the first deposition.
Q. During what?
A. During the first deposition.
Q. Those are those ladies in New York?
A. Correct.
Q. Who you told about the jokes but you didn't tell them about the comments about your legs; is that correct?
A. Correct.
Q. Pardon?
A. Correct.
Q. And that's all you told them, Laura Peffal and Marilyn?

A. Correct.
Q. Whose last name you don't remember?

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A. Correct.
Q. Those are the two ladies in New York you told?
A. Correct.
Q. Was there anyone else in New York you told?
A. I don't recall.
Q. But you do recall all you told them was about the jokes at lunch with Angelo?
A. Correct.
Q. But not about the comments about your legs?
A. Correct.
Q. Those were not superiors of yours, were they?
A. No.
Q. And did you say anything to Donna Thibideau?
A. I had mentioned something to Donna Thibideau at one time.

Q. What did you tell Donna Thibideau?
A. I believe I already testified to that in my first deposition.
Q. Okay. I am asking you if you can recall

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it now.
A. I don't recall exactly what I said to Donna.
Q. And what was Donna's job?
A. Customer service manager.
Q. So you didn't work for her either, did you?
A. No, I did not.
Q. In fact, did Donna indicate to you that there was another lady who had been harassed by Ted?
A. Yes.
Q. Who?
A. Ann Pillow.
Q. Is there anyone else you told? You got Crosson, you got Schneider, you got two ladies in New York and you got Donna Thibideau.
A. And Sherry Hester.
Q. Who is she?

A. Customer service representative.
Q. Down in North Carolina?
A. Correct.
Q. You told her what?
A. I don't recall exactly what I told Sherry.

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Q. She wasn't a supervisor of yours, was she?
A. No, she was not.
Q. Anyone else?
A. At this point I can't recall.
Q. Anyone else?
A. Correct.
Q. Had you ever told Patrick Lawrence before you wrote the letter?
A. No, I had not.
Q. And he was your supervisor, wasn't he?
A. Yes, he was.
Q. Why didn't you ever tell Patrick Lawrence that you had been harassed?
A. I didn't tell Pat because I was afraid that when Ted was confronted with this that my job

would be more difficult.
Q. More difficult than it was?
A. More difficult because I was telling them what had occurred.
Q. Who would have made it more difficult in your mind?
A. Pat Lawrence, Ted Slowik and anyone else who could make my job more difficult.

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jeopardy.
Q. And you felt that telling Lawrence would put your job in jeopardy?
A. Yes, I did.
Q. His boss already knew that you were being harassed and that you were ignoring it, didn't he?
A. Yes, he did.
Q. According to your version of events here?
A. Correct.
Q. So how would telling Patrick Lawrence put your job in jeopardy?
A. Because it would be his duty as my

supervisor to report any incidents of sexual harassment.
Q. And you believed he would do that, wouldn't he?
A. I don't know. I would hope that he would.
Q. And that's why you didn't tell him because he had a duty to report it?
A. I would have hoped that he would do his job to report it, but I did not want to tell him

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about it because he would report it thus putting my job in jeopardy.
Q. You didn't give him the opportunity to report it, did you?
A. No, I did not.
Q. Did you ever read the Burlington Company employee handbook?
A. Yes, I did.
Q. Did you read in there that there was a companywide policy against sex harassment?
A. Yes, I did.
Q. In fact, you signed acknowledging

receipt of the handbook, didn't you?
A. Correct.
Q. And you did read it?
A. Correct.
Q. And the handbook also said that if you didn't feel comfortable talking to your own supervisor that you could talk to human resources or personnel, didn't it?
A. I don't recall that part of the --
Q. Do you recall anything in the handbook giving you the option of talking to somebody other than your immediate supervisor?

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A. No, I do not.
Q. In any event you chose not to do that, didn't you?
A. Chose not to do what?
Q. To report the conduct of Ted Slowik.
A. Correct.
Q. To anyone in authority.
A. Correct.
Q. Isn't that right?
A. Correct.

Q. But you do remember reading that there was a companywide policy against sexual harassment in the company, didn't you?
A. Correct.
Q. Does Burlington have a human resources department?
A. Yes, it does.
Q. You never told anyone in human resources about it, did you?
A. No, I did not.

* * *

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Q. Do you recall anything in the handbook that said if you had any concern about a work related matter you could talk to your supervisor or if you didn't feel comfortable talking to your supervisor you could talk to the personnel manager?
A. I don't recall that, no.
Q. You did read it though, didn't you?
A. At one point, yes.
Q. When you were being subjected to the course of conduct that you have testified here to in the last two days, did you review the employee

handbook as to what options you had, what kind of protection you may have had?

A. No, I did not.

Q. Why?

A. Because my husband advised me not to say anything to anyone or my job could be in jeopardy.

* * *

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Q. Did you ask your husband why he thought your job would be in jeopardy?

A. We discussed it, yes.

Q. Why did he think your job would be in jeopardy?

A. Because if someone were aware of these incidences and went to Ted with them that I had gone to someone regarding this that it would be very easy for Ted or anyone else to find reasons to make my job more difficult or to fire me.

Q. So you and your husband decided among yourselves that you ought not tell anyone at Burlington in any authority about what was going on; is that correct?

A. Correct.

Q. That's a decision you and your husband made?

A. Correct.

Q. And that's not based on anything that anyone at Burlington ever told you; isn't that right?

A. That's correct.

Q. That's just you and -- What is your husband's first name?

[p. 362]

A. Steve.

Q. You and Steve Ellerth sitting at home discussing this?

A. Correct.

Q. And he thought that it would be better for you to endure sexual harassment and keep your job than it would be to report it and try and correct the situation; is that right? That's what he thought?

A. That's correct.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KIMBERLY B. ELLERTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 95 C 0839
	)	
BURLINGTON INDUSTRIES, INC.,	)	JUDGE CASTILLO
	)	
Defendant.	)	

PLAINTIFF'S RESPONSES TO DEFENDANT'S RULE 12(M) STATEMENT OF MATERIAL FACTS

Statement No. 1: Ellerth currently resides at 117 Crescent Lane, Schaumburg, Illinois. (Compl., Ex.).

RESPONSE TO STATEMENT NO. 1: Admit.

Statement No. 2: Burlington is a Delaware corporation with a Chicago office located at 311 South Wacker Drive Suite 3375.

RESPONSE TO STATEMENT NO. 2: Admit.

Statement No. 3: On October 17, 1994, Ellerth's charge of discrimination was received by the Illinois

Department of Human Rights and cross-filed at the Equal Employment Opportunity Commission on October 28, 1994. On October 12, 1994, Ellerth requested a Notice of right to sue from the EEOC which she received on December 2, 1994. The EEOC issued the Notice of right to sue because it determined it would be unable to complete its investigation process within 180 days from the filing of the charge. (Compl., Ex.)

RESPONSE TO STATEMENT NO. 3: Admit.

Statement No. 4: On February 9, 1995, Ellerth filed her complaint in which she claimed she was subjected to a sexually hostile work environment, resulting in her constructive discharge. (Compl., ¶4).

RESPONSE TO STATEMENT NO. 4: Admit.

Statement No. 5: Burlington is a manufacturer of textiles and home furnishings which employs over 22,000 people and operates more than 50 plants and offices. Burlington maintains its corporate office and manufacturing headquarters in Greensboro, N.C. and its merchandising headquarters in New York, N.Y. Sales office are located throughout the world. (Handbook, p. 1, Ellerth Dep. p. 13).

RESPONSE TO STATEMENT NO. 5: Admit.

Statement No. 6: Ellerth holds a Bachelor of Science degree in education from Western Illinois University.

Ellerth graduated in 1992. (Ellerth Dep., p. 4-7, Ex. 1).

RESPONSE TO STATEMENT NO. 6: Admit.

Statement No. 7: Ellerth first interviewed with Burlington in March, 1993. Ellerth interviewed with Mary Strenk Fitzgerald ("Fitzgerald") for the position of merchandising assistant in Burlington's Chicago office. Fitzgerald works as a national accounts manager in Burlington's Mattress Fabric, or "Ticking" Division which manufactures and sells fabric covers for mattresses. (Ellerth Dep., pp. 12-17.)

RESPONSE TO STATEMENT NO. 7: Admit. Ellerth adds, however, that the interview with Fitzgerald was only the first of a set of two interviews, the second interview being with Ted Slowik, defendant's vice-president of sales and marketing, Fitzgerald's direct superior. (Pl. dep. 48:2-3.)[1] (See response to Statement No. 8.)

Statement No. 8: Shortly after the Fitzgerald interview, Ellerth had a second interview with Burlington. Ellerth met with Theodore Slowik ("Slowik") for approximately 15 to 30 minutes in a restaurant at the Marriott Suites in Rosemont, Illinois. (Ellerth Dep., pp. 0-22, 29.)

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[1] Reference to "Pl. dep. ___." are references to portions of plaintiff Kimberly Ellerth's deposition transcript, attached as Pl. Ex. C to the appendix to plaintiff's answer brief.

RESPONSE TO STATEMENT NO. 8: Admit. Ellerth adds that during this job interview of plaintiff by Slowik, Slowik asked Ellerth if she was married, if she was "planning on having a family" and if she was "practicing" to have a family with her husband. (Pl. dep. 25:2-8; 26:g-11.) Ellerth thought that the question about whether she was married was "inappropriate" in the context of a job interview, and the question about whether she was "practicing" to have a family with her husband was "offensive" and "humiliating." (Pl. dep. 25:2-8; 26:21-27:3; 29:2-7.) Then, also during this interview, Slowik stared at Ellerth in a sexual way by staring at her breasts and legs for "constant" and "prolonged periods of time." (Pl. dep. 85:13-15; 87:15-24.)

Statement No. 9: Slowik works out of Burlington's New York office and holds the position of vice president of sales and marketing for Burlington's House Mattress Ticking area. (Slowik Dep., pp. 7-8).

RESPONSE TO STATEMENT NO. 9: Admit. Ellerth adds, however, that Slowik travels "an awful lot" on his job, "perhaps" 50% of the time. (Slowik dep. 9:24-10:2.)[2] Slowik traveled to the Chicago office where Ellerth worked approximately "a day or two every month or two." (Pl. dep. 46:22-47:21.) In addition, Ellerth and Fitzgerald were the only two people who worked in Slowik's Mattress and Fabric Division in the Chicago office, and Slowik would talk to Ellerth in Chicago on the phone approximately "once a week." (Pl. dep. 44:18-45:15; 130:14-131:18.) Slowik also

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[2] References to "Slowik dep. ___." are references to portions of Ted Slowik's deposition transcript, attached as Pl. Ex. D to the appendix to plaintiff's answer brief.

traveled to Burlington's corporate office and manufacturing headquarters in Greensboro, N.C., on occasion, where Ellerth also encountered Slowik. (Pl. dep. 96:17-97:9; 102:12-105:13; 106:811; 109:3-113:17-20.) Ellerth also saw Slowik when she traveled to New York and San Francisco for her training. (Pl. dep. 58:11-59:6; 215:19-216:9.)

Statement No. 10: About one week after Ellerth's interview with Slowik, Fitzgerald called Ellerth to offer her the position, which Ellerth accepted. (Ellerth Dep., p. 33.)

RESPONSE TO STATEMENT NO. 10: Admit.

Statement No. 11: As a merchandising assistant, Ellerth's duties were comprised of assisting Fitzgerald on a day to day basis. Fitzgerald was Ellerth's direct supervisor. (Ellerth Dep., pp. 33, 39-41).

RESPONSE TO STATEMENT NO. 11, sentence No. 1: Deny to the extent that Ellerth's duties also entailed traveling to New York, San Francisco and Greensboro, North Carolina, and speaking with Slowik on the phone approximately "once a week," as well as assisting Fitzgerald in sales. (Pl. dep. 49:14-50:22; 58:23-6; 93:8-94:12; 130:14-131:18; 16:24-17:4; 215:19-216:9.)

RESPONSE TO STATEMENT NO. 11, sentence No. 2: Admit. Ellerth adds, however, that Slowik was Fitzgerald's direct supervisor. (Slowik dep. 9:1-11.)

Statement No. 12: In February and March, 1994, Ellerth interviewed for promotion to the position of sales representative for the Midwest territory. Ellerth received the promotion after interviewing with Patrick Lawrence ("Lawrence") and Slowik. Lawrence became Ellerth's immediate supervisor. (Ellerth Dep., pp. 191-198).

RESPONSE TO STATEMENT NO. 12: Admit. Ellerth adds that Slowik had the "ultimate decision-making power" about whether to promote Ellerth. (Slowik dep. 32:8-20; Pl. dep. 197:4-8.) Ellerth also adds that during this interview with Slowik, Slowik told Ellerth that he had hesitations about promoting her because she was not "loose enough" for him. (Pl. dep. 199:2-200:2.) Also during this interview, Slowik reached over and rubbed Ellerth's knee with his hand and asked her that since this new position required her to travel a lot, "isn't your husband going to miss you?" (Pl. dep. 200:3-15.) Ellerth was "very embarrassed and humiliated again" by Slowik during this interview. (Pl. dep. 201:12-20.)

To further clarify the circumstances of this interview with Slowik, Ellerth adds that prior to her interview with Lawrence, Patrick Crosson ("Crosson"), Ellerth's predecessor in the midwest sales representative position, told her that Slowik had told Crosson that he did not want Ellerth to be promoted because she was "arrogant." (Pl. dep. 187:20-24.) Slowik also told Lawrence that Ellerth was "arrogant." (Pl. dep. 188:15-19.) Then, during her interview for the promotion with Lawrence, Lawrence told Ellerth that Slowik "called her arrogant." (Pl. dep. 195:4-11.) When Ellerth confronted Slowik about this, Slowik admitted he had called Ellerth "arrogant" because she was not "loose enough" for

him. (Pl. dep. 199: 4-24.) Ellerth's deposition testimony of the job interview with Slowik for a promotion, in pertinent part, is as follows:

A: That's exactly what he said. "I have my hesitations having you in this position."

Q: Okay. And you said?

A: And I confronted him and I said, "I heard you called me arrogant," and he said, "Yes, I did."

Q: And you said?

A: And I said, "Is it because I'm not loose enough for you, Ted?"

Q: And he said?

A: He said, "Well, yes" -- he said yes.

Q: He said yes?

A: Yes, he did.

Q: Okay. And then what happened?

A: At --

Q: Was the word loose your word, you used the word?

A: I used it because he had used it on me before.

Q: When?

A: At the Fifth Season [the lounge at the Four Seasons hotel in Greensboro, North Carolina].

Ellerth understood Slowik's comment to imply that Slowik did not think that she was sexually "loose enough" for him. (Pl. aff. ¶40.)[y]

Lawrence, as defendant's national sales coordinator, also reported directly to Slowik. (Pl. dep. 191:22-192:20.)

Statement No. 13: The promotion raised Ellerth's salary $4,000.00 per year, and she also became entitled to receive a yearly bonus. (Ellerth Dep., p. 210).

RESPONSE TO STATEMENT NO. 13: Admit.

Statement No. 14, sentence No. 1: After Ellerth received her promotion, Lawrence and other Burlington employees began receiving complaints from customers and employees regarding Ellerth's job performance.

RESPONSE TO STATEMENT NO. 14, sentence No. 1: Deny to the extent that Ellerth was promoted in March 1994, and Lawrence did not receive any complaints regarding her until over two months later in May 1994, at which time the complaint Lawrence received was that she had not returned

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[y] References to "Pl. aff. ¶__" are references to plaintiff's affidavit, attached as Pl. Ex. A to the appendix to plaintiff's answer brief.

some telephone calls in a timely manner.[4] (Pl. dep. 203:22-204:6; 279:22.) In addition, only Lawrence and Thibideau received complaints from only 1-2 customers and employees. (Pl. dep. 282:5-8; 285:11-17; Pl. aff. ¶47.) Ellerth further adds that defendant possesses no documentation regarding any of these alleged customer and employee complaints. (Lawrence dep. 31:3-5; 35:20-23.)[5]

Statement No. 14, sentence No. 2: In May, 1994, Lawrence and Ellerth had conversations in which they discussed the complaints about Ellerth's performance as well as ways in which Ellerth could make improvements. (Ellerth Dep., pp. 277-282.)

RESPONSE TO STATEMENT NO. 14, sentence No. 2: Deny. In May 1994, Lawrence and Ellerth had one conversation in which they discussed varying ways she could do things at the office. (Pl. dep. 279:22-280:22.) Lawrence agreed with some of the suggestions made by about how to improve upon how Ellerth's predecessor handled certain matters. (Pl. dep. 286:17-287:5; Lawrence dep. 37:16-38:3.) Complaints about Ellerth allegedly not returning some phone calls were not mentioned during this conversation. (Pl. dep. 279:22-280:22.) This conversation took place at John's

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[4] Plaintiff's work performance is irrelevant to the matter to be decided here in that defendant has not alleged that plaintiff was discharged for poor work performance. (Defendant's answers to interrogatories, interrogatory no. 4, attached as Pl. Ex. J to the appendix to plaintiff's answer brief.)

[5] References to "Lawrence dep. ___." are references to portions of Patrick Lawrence's deposition transcript, attached as Pl. Ex. E to the appendix to plaintiff's answer brief.

Garage Burger Place in the Woodfield Mall in Schaumburg, Illinois. (Pl. dep. 280:5-281:6.)

Statement No. 15: On May 22, 1994, Lawrence sent Ellerth a memorandum addressing the complaints received about Ellerth from customers and Burlington employees. (Ellerth Dep., pp. 281-98; Ex. 2.)

RESPONSE TO STATEMENT NO. 15: Admit. Ellerth clarifies that the letter dated May 22, 1994, received from Lawrence regarded Ellerth not having returned some phone calls, from two customers and three employees. (Pl. dep. 284:8-11; 285:15-286:12.) Ellerth adds, however, that at the time she recognized that the letter from Lawrence erroneously referred to a phone conversation on or about May 18, 1994, which did not take place between Ellerth and Lawrence. (Pl. dep. 284:20-24; 293:5-24.)

Statement No. 16: On May 31, 1994, Ellerth left a message on Patrick Lawrence's answering machine informing him she was quitting. Ellerth also faxed Lawrence a letter to the same effect. The letter received by Lawrence did not mention that Ellerth had been sexually harassed by Slowik. (Ellerth Dep., pp. 297-299; Ex. 3.)

RESPONSE TO STATEMENT NO. 16: Admit. Ellerth adds that the version of the letter received by Lawrence did not refer to the sexual harassment because Ellerth had whited-out the sentences she had written regarding the sexual harassment before she faxed the letter to Lawrence. (Pl. dep. 299:9-14.) Ellerth whited-out the sentences referring to

Slowik's sexual harassment of her because her husband advised her not to leave it in there. (Pl. dep. 300:1-17.)

At her deposition, Ellerth clarified that the whited-out sentences read:

1) "What I did not want to mention to you was the fact that Ted had harassed me in the past and I simply ignored him to save my job."

(Pl. dep. 307:9-12.)

2) "Needless to say these incidents could be seen as sexual harassment."

(Pl. dep. 310:5-6.)

3) "What a shame that one man can have such an influence."

(Pl. dep. 312:8-9.)

In addition to the fax, Ellerth mailed a letter to Lawrence, dated June 21, 1994, which described the sexual harassment by Slowik. (Pl. Ex. I; Pl. aft. ¶48.) Portions of this letter read as follows:

> Before I was hired, you and I spoke about the reasons why Ted [Slowik] didn't feel comfortable around me. I told you that he had said and done some sexually inappropriate things to me in the past. What I didn't tell you was that he had on two occasions, patted my rear and every time he saw me looked me up and down like a piece of meat....My entire time at Burlington, I had to ignore Ted and try to do what I needed to do in my job.

(Pl. Ex. I.)

> Statement No. 17: During her employment at Burlington, Ellerth saw Slowik, on average, for a day or two every month or two months. (Ellerth Dep. pp. 46-47).

RESPONSE TO STATEMENT NO. 17: Deny to the extent that Ellerth also saw Slowik when she had to travel for training to New York, North Carolina and San Francisco. (Pl. dep. 58:23-6; 49:14-50:22; 93:8-94:12; 215:19-216:9.) In addition, Ellerth and Fitzgerald were the only two people who worked in Slowik's Mattress and Fabric Division in the Chicago office and Slowik would call Ellerth in Chicago approximately "once a week." (Pl. dep. 44:18-45:15; 130:14-131:18.) Slowik traveled, by his own admission, "an awful lot", about 50% of the time, and would travel to the Chicago office where Ellerth worked approximately, "a day or two every month or two" months. (Slowik dep. 9:24 - 10:2; Pl. dep. 46:22-47:21.)

> Statement No. 18: During Ellerth's initial interview with Slowik at the Marriott Suites, Ellerth alleges that Slowik asked her if she was married, if she planned on having a family, and if she was practicing to have a family. Ellerth alleges that during the interview Slowik stared at her in a sexual way. Specifically, Ellerth claims Slowik's eyes would move down to her chest area for prolonged periods of time and that he stared at

her legs. Ellerth also claims that the stares were constant during the entire interview. Ellerth claims that she was humiliated during the interview. (Ellerth Dep., pp. 25-29; Ellerth Dep. pp. 85-87, Ellerth Int. Resp. 3.)

RESPONSE TO STATEMENT NO. 18: Admit. (See response to statement No. 8.)

Statement No. 19: Following the interviews, Ellerth sent a letter to Fitzgerald which in she wrote, "I appreciated the chance to meet with Mr. Slowik before he returned to New York. The insight that he gave me into the position only provided me with more incentive to take the job if offered." (Ellerth Dep., p. 347-49, Ex. 5.)

RESPONSE TO STATEMENT NO. 19: Admit. Ellerth adds that since this was her "follow-up" letter to her job interview with Burlington, she obviously wrote only positive things about the interview with Slowik, hoping that this would help her to stand out as a better candidate for the position for which she was applying. (Pl. aff. ¶7.) Ellerth admits that she was enthusiastic and optimistic about the position for which she was interviewing. (Pl. aff. ¶7.) Additionally, Slowik's initial interview of Ellerth was merely the first incident in Slowik's campaign of sexual harassment against her, and Ellerth was still hoping, at this point, that by ignoring Slowik's sexual harassment he might cease such behavior on his own.[9] (Pl. aff. ¶8)

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[9] Sexual harassment undermines a woman's self-esteem, making it less likely that she will complain about the harassment. See, James E. (continued...)

Statement No. 20: The next occasion that Ellerth saw Slowik or spoke with him was in the summer of 1993 when Ellerth travelled to New York for training. Ellerth travelled to New York to meet the Burlington employees with whom she would dealing and to understand their job functions. Ellerth believes she was in New York for one work week, Monday through Friday. (Ellerth Dep., pp. 49-51, 54, 58.)

RESPONSE TO STATEMENT NO. 20: Admit. Ellerth clarifies that she does not recall exactly how long she was in New York, but "believes" it may have been a full Monday-Friday week. (Pl. dep. 54:20-23.)

Statement No. 21: Ellerth does not recall whether she saw Slowik each day she was in New York. Ellerth recalls several conversations with Slowik, most lasting

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(...continued)
Gruber & Lars Bjorn, Women's Responses to Sexual Harassment: An Analysis of Sociocultural Organizational, and Personal Resource Models, 67 Soc.Sci.Q. 814, 817 (1986); Joy A. Livingston, Responses to Sexual Harassment on the Job: Legal, Organizational and Individual Actions, 38 J.Soc.Issues 5, 16 (1982). Women typically try to manage incidents of sexual harassment on their own by ignoring the behavior, avoiding the harasser, or trivializing the incidents in the hope it will put an end to the behavior. Morrison Torrey, We Get the Message: Pornography in the Workplace, 22 Sw.U.L.Rev. 53, note 1 at 69-70 (1992). "Victims who choose to complain know they will have to endure repeated verbalizations of the specific sexual abuse they complain about....Most victims of sexual harassment...never file complaints." Catherine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law, 114 (1987). "The very nature of sexual harassment inhibits its victims from coming forward because of fear of retaliation. Hansel v. Public Serv. Co. of Co., 778 F.Supp. 1126, 1133 (D. Colo. 10. 1991).

about five minutes. Ellerth recalls two conversations that were long in duration. (Ellerth Dep., pp. 56-58.)

RESPONSE TO STATEMENT NO. 21: Admit. Ellerth adds, however, that although she does not recall the exact number of times she saw Slowik while at the New York office, she had "more than five" conversations with him. (Pl. dep. 56:20-57:12.)

Statement No. 22: The first long conversation between Ellerth and Slowik took place in Slowik's office. During the conversation, several people walked in and out of Slowik's office. The conversation focused on the various people and positions in Burlington's New York office. Ellerth claims Slowik told one off-colored joke at the end of the conversation. Ellerth does not recall if others were present when he told the joke, nor could she provide additional details about the joke, its content or context. (Ellerth Dep., pp. 59-65, 65-66.)

RESPONSE TO STATEMENT NO. 22: Admit.[7] Ellerth adds, however, that the people walking in and out of Slowik's office during these conversations were mainly secretaries putting things on or taking things off Slowik's desk. (Pl. dep. 60:7-9.) The "joke" told by Slowik to Ellerth during this

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[7] Plaintiff's case is similar in this respect to Dey v. Colt Constr. Co., 28 F.3d 1446 (7th Cir. 1994), where summary judgment was denied. In Dey, the plaintiff described the circumstances surrounding the majority of the sexual harassment incidents, but only fully recalled five instances of the sexual harassment. Id. at 1449 - 1450.

meeting was "off-colored," "dirty" and "offensive."[8] (Pl. dep. 63:6-8; 66:1-5.)

Statement No. 23: Ellerth claims that Slowik told a total of around four off-colored jokes in the office, including the joke told in the first long conversation. Ellerth does not recall the circumstances or details of the other jokes. (Ellerth Dep., pp. 65-65.)

RESPONSE TO STATEMENT NO. 23: Deny to the extent that Ellerth does recall the circumstances of Slowik's jokes in that they took place during workplace discussions in defendant's New York office and that they were spoken to Ellerth by Slowik when no one else was present. (Pl. dep. 62:19-63:23.) Specifically, Slowik told approximately 5 off-colored, offensive jokes to Ellerth while she was in Slowik's office in New York. (Pl. dep. 63:3-7; 64:2-16; Pl. Ex. B.) In addition, Slowik told one offensive joke to Ellerth during the first long meeting in New York, and "well over 10", or approximately 20, jokes of a sexual nature during the second long meeting. (Pl. dep. 65:11-13; 118:16-21; Pl. Ex. B.)

Ellerth adds that she referred these "jokes" in her deposition as "off-colored," "dirty" and "offensive." (Pl. dep. 63:6-8; 66:1-5.)

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[8] Defendant's purpose in stressing that plaintiff cannot recall details about the sexually offensive joke is obviously to imply that the "joke" was not made and that plaintiff, therefore, is fabricating. This, however, is a question of fact for the jury. When deciding a motion for summary judgment, it is not appropriate to make credibility judgment and thereby determine that the events that plaintiff alleges did or did not happen.

Statement No. 24: The second long conversation Ellerth had with Slowik took place during a lunch meeting at a restaurant near Burlington's office in which Angelo Brenna, the vice president of International Sales for Burlington was also present. The lunch lasted about an hour and one-half during which time Ellerth claims Brenna and Slowik continuously told off-colored jokes. Ellerth does not recall anything else being said during the lunch beside the jokes, nor can she recall any of the jokes that were allegedly told. Brenna and Slowik drank 2 glasses of wine at lunch and Ellerth claims they both appeared intoxicated after the first glass. Ellerth also stated that Slowik and Brenna did not appear intoxicated prior to drinking the wine at lunch. Ellerth claims that Slowik reached over and rubbed her knee while seated at the table for lunch. Ellerth pulled her leg away and said nothing to Slowik or Brenna. Ellerth assumed Brenna did not see the rubbing. (Ellerth Dep., pp. 66-77, 118-19; Slowik Dep., p. 19).

RESPONSE TO STATEMENT NO. 24: Deny to the extent that Ellerth testified that she remembered only Slowik telling jokes "of a sexual nature," not Brenna, but both men were very loud. (Pl. dep. 71:6-8; 70:13-71:8.) Slowik got red in the face and was obnoxious. (Pl. dep. 70:14-15.) Ellerth also adds that "well over 10," or approximately 20, jokes were told at this meeting, and that these "jokes" were "frequent," "constant" and "got more offensive" as the meeting wore on. (Pl. dep. 70:13-71:17; Pl. aff. ¶11.)

Ellerth admits that Slowik reached over and rubbed her knee at the table and that she found this action by Slowik to

be highly offensive and unwelcome. (Pl. dep. 75:9-10; 76:21; Pl. aff. ¶13.)

Statement No. 25: While walking back to the office, Ellerth claims Slowik commented, "you have got great legs, Kim. What do you think, Angelo?" Ellerth believes Brenna responded but she cannot recall. Ellerth was walking about three or four feet in front of Slowik and Brenna. (Ellerth Dep., pp. 78-81.)

RESPONSE TO STATEMENT NO. 25: Deny to the extent that Ellerth testified that Brenna responded but she cannot recall exactly what he said. (Pl. dep. 79:17-22.)

Ellerth adds that as she was walking three or four feet ahead of Slowik and Brenna, she turned back after Brenna's response to Slowik's comment about her legs and saw that Slowik was staring at her legs. (Pl. dep. 80:20-81:6.) Ellerth felt humiliated and degraded by Slowik's comments and actions. (Pl. aff ¶14.) When Ellerth returned to the office after lunch, she told Marilyn (last name unknown), a "sample" person, and Laura Peffal, that Slowik and Brenna had been "very loud and obnoxious and rude and very offensive at lunch." (Pl. dep. 82:23-83:23.)

Statement No. 26: While in New York, Ellerth does not recall another conversation with Slowik after the lunch. (Ellerth Dep., pp. 89-90.)

RESPONSE TO STATEMENT NO. 26: Admit.

Statement No. 27: Ellerth did not see Slowik nor speak with him until approximately one month after the New York trip when she travelled to Greensboro, N.C. for additional training. Ellerth spend one work week in North Carolina, Monday through Friday, travelling around visiting the various factories of Burlington. (Ellerth Dep., pp. 92-96).

RESPONSE TO STATEMENT NO. 27: Deny to the extent that Ellerth merely does not specifically recall seeing or speaking with Slowik until approximately one month after the New York trip in North Carolina. (Pl. dep. 92:23-93:4.) Ellerth testified that Slowik telephoned her prior to the New York and North Carolina trips, and that Slowik included some sexual innuendoes in each such conversation. (Pl. dep. 163:10-13; 131:9-22.)

Statement No. 28: Ellerth first saw Slowik in North Carolina about three days after she arrived while at a dinner in Greensboro. Ellerth had dinner with Slowik, a sales representative named Dan, (Ellerth cannot recall last name) and Dan's wife. Ellerth does not allege any inappropriate conduct toward her at the dinner. However, Ellerth claims Slowik was loud and obnoxious during dinner and gave the waitress a hard time. Ellerth does not recall any details about how Slowik treated the waitress, she just remembers thinking his behavior was very inappropriate and offensive. (Ellerth Dep., pp. 96-105.)

RESPONSE TO STATEMENT NO. 28: Deny to the extent that Ellerth remembers that Slowik's comments to the waitress were "sexually offensive comments." (Pl. dep. 117:21-118:1.)

Statement No. 29: After dinner, Ellerth accompanied Slowik to the bar at the hotel in which they were staying. Slowik alleged commented about the female band members stating that they had nice breasts, nice legs and nice, skimpy outfits. Ellerth claims that regarding the breasts, Slowik questioned "[y]ou are a little lacking in that area, aren't you Kim?" Ellerth did not reply to Slowik regarding any of the comments and she claims that Slowik told her that she "ought to loosen up." At the bar, Slowik allegedly engaged in prolonged looks at Ellerth's breasts and legs. Upon leaving the bar, Ellerth claims Slowik stated that he could make Ellerth's job "very hard or very easy." (Ellerth Dep., pp. 106-115; Ellerth Int. Resp. 10).

RESPONSE TO STATEMENT NO. 29: Admit. Ellerth clarifies that after the business dinner with Dan, Slowik invited Ellerth to the "Fifth Season" which is the lounge of the Four Seasons Hotel where they were staying. (Pl. dep. 106:8-9.) Ellerth felt compelled to accept his invitation since she was on a business trip and Slowik was her supervisor. (Pl. aff. ¶17.) Ellerth further clarifies that what was said to her by Slowik upon leaving the bar was, "You know, Kim, I could make your job very hard or very easy at Burlington," clearly implying that she would have to engage in sexual relations with Slowik in order to succeed in the business.[2/] (Pl. dep. 113:17-20; Pl. aff. ¶22.)

[2/] Slowik's implication that he could make her life at Burlington very hard or very easy depending on whether plaintiff engaged in sexual relations with him was clear to plaintiff (and any reasonable person in her situation) given the totality of the circumstances up to that point, namely Slowik's prior inappropriate comments regarding plaintiff's appearance and her intimate marital relations, his staring at her breasts and legs, and

(continued...)

Statement No. 30: At the dinner and at the hotel bar were the only occasions Ellerth saw Slowik or spoke with him while she was in North Carolina. (Ellerth Dep., p. 116.)

RESPONSE TO STATEMENT NO. 30: Deny to the extent that Ellerth "does not recall" whether she saw or spoke to Slowik again in North Carolina besides at the hotel bar and at dinner. (Pl. dep. 116:8-9.)

Statement No. 31: After her visit to North Carolina, Ellerth claims she began to have conversations with Slowik on the telephone. The conversations were brief, usually Slowik would ask a work-related question and Ellerth would answer. Ellerth estimated that she had these conversations about once every six to eight working days. Ellerth claims there were sexual innuendoes during each and every phone conversation she had with Slowik. Ellerth cannot recall what Slowik said in these conversations, save one time when Slowik allegedly said to Ellerth that it "must be difficult for a woman like you Kim to have a job like that, a woman with great legs." (Ellerth Dep., pp. 131-134, 163-164, 17274, Ellerth Int. Resp. 18.)

RESPONSE TO STATEMENT NO. 31, sentence No. 1: Deny to the extent that Ellerth did not claim that she began having phone conversations with Slowik after North Carolina, but that these communications started happening with more

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(...continued)
his unwelcome and offensive touchings on her knees and rear end. (Pl. aff. ¶22.)

frequency at that time. (Pl. dep. 131:10-12.) Ellerth testified that Slowik was telephoning her even before Ellerth went to New York or North Carolina. (Pl. dep. 163:10-13.)

RESPONSE TO STATEMENT NO. 31, sentence no. 2: Admit.

RESPONSE TO STATEMENT NO. 31, sentence no. 3: Admit. Ellerth adds that she testified in her own words that phone conversations between Slowik and her occurred "once a week" (Pl. dep. 131:1718.)

RESPONSE TO STATEMENT NO. 31, sentence no. 4: Admit.

RESPONSE TO STATEMENT NO. 31, sentence no. 5: Deny. Ellerth does remember what Slowik said in these conversations because she remembers that Slowik made sexual innuendoes in every conversation, and that during some of these conversations, Slowik (1) asked "How are those legs of yours, Kim, ha, ha, ha;" (2) asked whether Ellerth and her husband were still "practicing to have a family;" (3) stated "It must be hard for a woman like you, Kim, to have a job like that, a woman with great legs;" (4) told Ellerth an offensive joke: "What's the difference between a blonde"[10/] and a limo? Not everyone's been in a limo;" (5) in response to a business request from Ellerth, responded "I don't have time for you right now, Kim, unless you tell me what you're wearing;" and (6) asked Ellerth if she was wearing "shorter skirts yet" because that would make her job "a whole heck of a lot easier." (Pl. dep. 131:9-22; 132:9-22; 133:11-13; 171:11-174:17; 253:16-17; 256:2-258:4; Pl. aff. ¶45.)

10/ Plaintiff is blonde.

Statement No. 32: Ellerth next saw Slowik when he visited the Chicago office in the fall of 1993. Ellerth was on the floor folding fabric samples when Slowik walked by with another employee. Slowik allegedly commented, "[o]n your knees again, Kim" as he walked by Ellerth. (Ellerth Dep., pp. 134-136, 139-140).

RESPONSE TO STATEMENT NO. 32, sentence no. 1: Deny. Ellerth saw Slowik "at least one other time" after North Carolina and before the "on your knees again, Kim" episode. (Pl. dep. 130:18-21.) Ellerth understood the "on your knees again, Kim" comment to be a reference to fellatio, which Ellerth found to be degrading and offensive. (Pl. aff. ¶27.)

RESPONSE TO STATEMENT NO. 32, sentence no. 2: Admit.

RESPONSE TO STATEMENT NO. 32, sentence no. 3: Admit.

Statement No. 33: Slowik testified that he has used the phrase "here we are again on our knees" for over 20 years with both male and female employees. (Slowik dep., p. 43.)

RESPONSE TO STATEMENT NO. 33: Admit. Ellerth adds, however, that Slowik stated to her, "on your knees again, Kim" while she had been working on her knees and Slowik was in an upright position, thus rendering an already unequal situation even more degrading and belittling. (Pl. dep. 135:3-136:6; Pl. aff. ¶27.) Slowik did not say "here we

are on our knees again" while they were both on the floor on their knees.[11/] (Pl. dep. 135:3-136:6.)

Statement No. 34: Ellerth claims she saw Slowik during another visit by Slowik to the Chicago office in the fall of 1993. Ellerth alleges that Slowik was making phone calls from her office and when she walked in Slowik commented, "It's nice to have my butt where your butt was." (Ellerth Dep., pp. 140-143.)

RESPONSE TO STATEMENT NO. 34: Admit. Ellerth adds that Slowik was seated in her office on her chair when he made this comment. (Pl. dep. 141:6-8.) In addition, Ellerth's exact words in the deposition were that Slowik said "It's nice to have my butt where your butt was, Kim." (Pl. dep. 140:12-141:8.) Ellerth was made to feel very uncomfortable by Slowik's comment. (Pl. aff. ¶28.)

11/ Plaintiff adds that men and women reasonably view the same conduct or comments differently: "Social life occurs only in social context," and "men and women have unequal positions in a single shared system of social meaning." MacKinnon, Catharine A., Only Words, 48 (1993). Moreover, sexual harassment should be "analyz[ed] from the victim's perspective . . . conduct that many men consider unobjectionable may offend many women." Ellison v. Brady, 924 F.2d 872 at 878-79 (9th Cir. 1991.) "[B]ecause women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior." Id. "Men and woman are vulnerable in different ways and offended by different behavior." Yates v. AVCO Corp., 819 F.2d 630, 637, n.2 (6th Cir. 1987). "Because of the inequality and coercion with which it is so frequently associated in the minds of women, the appearance of sexuality in an unexpected context or a setting of ostensible equality can be an anguishing experience." Abrams, Gender Discrimination & the Transformation of Workplace Norms, 42 Vand.L.Rev. 1183, 1205 (1989).

Statement No. 35: Ellerth next saw Slowik at the office holiday party in December 1993. About 50 employees and customers attended the party in a restaurant in Rosemont, Illinois. Ellerth claims that Slowik patted her rear as he walked past her during the party. (Ellerth Dep., pp. 146154).

RESPONSE TO STATEMENT NO. 35, sentence no. 1: Deny to the extent that the holiday party in 1993 was "the next specific incident" Ellerth could "specifically recall" after the incident where Slowik commented "It's nice to have my butt where your butt was, Kim." (Pl. dep. 146:17-20; 148:13-16.) There may have been intervening incidents, and there certainly were intervening telephone conversations during which Slowik interjected unwelcome sexual innuendoes. (Pl. aff. ¶29, 30.)

RESPONSE TO STATEMENT NO. 35, sentence no. 2: Admit.

RESPONSE TO STATEMENT NO. 35, sentence no. 3: Admit. Ellerth adds, however, that before Slowik touched her buttocks at the office party, Slowik approached Ellerth's husband, patted him on the shoulder and said, "You are a lucky man to have a woman like that," referring to Ellerth. (Pl. dep. 148:19-24.) Ellerth found this comment to be "offensive," "condescending and sexually offensive." (Pl. dep. 149:22-150:7.) Slowik was looking at Ellerth's buttocks and legs as he made this comment to her husband. (Pl. dep. 150:16-23.)

Statement No. 36: Following the holiday party, Ellerth does not recall seeing Slowik until her promotion

interview in March, 1994. The interview took place in the restaurant of the Marriott Suites in Rosemont, the same location as her initial job interview with Slowik. Ellerth claims that Slowik that he had called her "arrogant" because she was "not loose enough." Ellerth alleges that Slowik reached over and rubbed her knee during the interview, and when discussing the travel associated with the position, Slowik asked, "isn't your husband going to miss you." (Ellerth Dep., pp. 197-202.)

RESPONSE TO STATEMENT NO. 36, sentence no. 1: Deny. "Generally," Ellerth recalls "one or two instances where [Slowik] was out [in Chicago] again" after the holiday party and before her interview with Slowik. (Pl. dep. 158:2-13.) On these occasions, Slowik "would say something to Ellerth or make a comment to" her which would make Ellerth very upset. (Pl. dep. 158:2-13.) In addition, Slowik had a telephone conversation in February or March 1994 in which he responded to Ellerth's business question with "It must be hard for a woman like you, Kim, to have a job like that, a woman with great legs." (Pl. dep. 171:11-174:17.)

RESPONSE TO STATEMENT NO. 36, sentence no. 2: Admit.

RESPONSE TO STATEMENT NO. 36, sentence no. 3: Admit. Ellerth adds that Slowik agreed that he had called her "arrogant" to other persons because she was not "loose enough" for him, and he said this gave him "hesitations" about promoting Ellerth. (Pl. dep. 199:2-200:2.) Ellerth understood that Slowik meant that she was not sexually "loose enough", especially given the context in which Slowik made

this comment (which was followed by Slowik rubbing her knee). (Pl. aff. ¶40.) Ellerth found Slowik's comments to her and his rubbing of her knee during this interview to be highly humiliating, embarrassing, offensive and unwelcome. (Pl. dep. 201:15-20; Pl. aff. ¶41.)

RESPONSE TO STATEMENT NO. 36, sentence no. 4: Admit.

Statement No. 37: Slowik called Ellerth about two weeks later to inform her she got the promotion. Ellerth alleges Slowik made a sexually inappropriate comment during the conversation which caused Ellerth to start crying. Ellerth does not recall what Slowik said. Ellerth also claims that "every time I was on the phone with him I ended up most -- in tears." (Ellerth Dep., pp. 204-207.)

RESPONSE TO STATEMENT NO. 37: Admit.

Statement No. 38: During the last week of March, 1994, Ellerth travelled to San Francisco for a bedding conference. Several Burlington employees, including Slowik, were present. Ellerth spent one work week, Monday through Friday, at the conference. Ellerth did not have contact with Slowik until the last day of the conference. Ellerth also claims that Slowik was ignoring her prior to her last day in San Francisco. At the conference center on Ellerth's last day in San Francisco, Slowik walked by her and allegedly said something about her "ass", although Ellerth does not recall what Slowik said. The comment was the only

contact Ellerth had with Slowik during her week in San Francisco. (Ellerth Dep. pp. 213-217, 225-228, 238-244).

RESPONSE TO STATEMENT NO. 38: Deny to the extent that Ellerth did have contact with Slowik for the entire five days of the conference, and, in fact, "saw him often." (Pl. dep. 215:19216:1.) Slowik, however, openly ignored Ellerth for the first three to four days, a fact which Crosson, Thibideau and a group of sales representatives at dinner acknowledged to Ellerth. (Pl. dep. 213:22-219:20; 222:8-22; 224:1-6.) Ellerth believed Slowik to be ignoring her because she "had not responded favorably to his sexual harassment." (Pl. dep. 244:9-14.) Ellerth adds that on the last day of the conference, Slowik made a "sexually inappropriate" comment to Ellerth about her "ass," which caused; Ellerth to run to the bathroom and cry. (Pl. dep. 225-228; 238244.) As Slowik made this comment to Ellerth, he stopped and stared "in a very sexual way," "for a prolonged period of time at [Ellerth's] back end." (Pl. dep. 246:23-247:10.)

Statement No. 39: After San Francisco, Ellerth next spoke with Slowik during a telephone conversation during the month of April. Ellerth cannot recall when the conversation occurred, or where she was during the conversation. Ellerth claims Slowik made a joke "about blonds, a limo and sex." Ellerth recalls nothing else about the call other than the subjects of the joke. (Ellerth Dep., pp. 252-255.)

RESPONSE TO STATEMENT NO. 39: Deny to the extent that there may have been other telephone conversations between Slowik and Ellerth before April, Ellerth just did not

recall them. (Pl. dep. 252:19-21.) Also, Ellerth did recall when the conversation occurred because she stated it was in April. (Pl. dep. 252:1921.) Ellerth adds that Slowik's "very offensive" "joke" to Ellerth was: "What's the difference between a blonde and a limo? Not everyone's been in a limo." (Pl. dep. 252:19-21; Pl. aff. ¶45.)

Statement No. 40: Ellerth claims she had two telephone conversations with Slowik in May 1994 pursuant to her attempt to obtain permission from Slowik to do a special project for a customer. During the first conversation, Slowik allegedly told Ellerth he did not have time for her unless she told him what she was wearing. Slowik denied Ellerth permission for the project in the second conversation and allegedly asked Ellerth if she was "wearing shorter skirts yet...because it would make your job a whole heck of a lot easier." (Ellerth Dep., pp. 255-258, 264-270.)

RESPONSE TO STATEMENT NO. 40: Admit. Ellerth adds that when she initially called an employee named Rich (last name unknown) for this permission, he told her she had to speak to Slowik to receive it. (Pl. dep. 263:20-264:4.)

Statement No. 41: Ellerth was aware throughout her employment that Burlington maintained a policy against sexual harassment. (Ellerth Dep., p. 358.)

RESPONSE TO STATEMENT NO. 41: Deny. While Ellerth knew there was a policy against sexual harassment in the employee handbook, she was not aware of whether it was being enforced, whether it was in effect throughout her

employment, or who to complain to should she experience a problem with sexual harassment. (Pl. dep. 358:6-359:1; Pl. aff. ¶49.)

Statement No. 42: Ellerth received a copy of Burlington's employee handbook and read the policy against sexual harassment in the handbook. (Ellerth Dep., pp. 358-59; Handbook p. 3.)

RESPONSE TO STATEMENT NO. 42: Admit.

Statement No. 43: Ellerth chose not to inform her supervisors or anyone in authority regarding Slowik's conduct because her husband advised her not to say anything to anyone because it would jeopardize her job. Ellerth and her husband believed her job would be in jeopardy based on stories they heard on the news and his alleged experiences at Sears, Roebuck & Co. None of either Ellerth's or her husband's beliefs had anything to do with Burlington. (Ellerth Dep., pp. 308-09, 358-62.)

RESPONSE TO STATEMENT NO. 43, sentence no. 1: Admit. Ellerth adds, moreover, that she did not need to "inform" Angelo Brenna, defendant's vice president of international sales, of Slowik's sexually harassing conduct since such conduct took place in front of Brenna. (See defendant's 12M statement, Nos. 24 and 25.)

RESPONSE TO STATEMENT NO. 43, sentence no. 2: Deny. Ellerth and her husband did not believe her job was in jeopardy "based on stories they heard on the news and her

husband's alleged experiences at Sears, Roebuck & Co." (Pl. dep. 361:2-362:14; Pl. aff. ¶50.) Ellerth testified that her husband thought her job would be in jeopardy if she complained about the sexual harassment because "it would be very easy for [Slowik] or anyone else to find reasons to make [her] job more difficult or to fire [her]." (Pl. dep. 361:2-11.) Ellerth's comment that stories of sexual harassment are "all over the news every day" was meant to convey merely that she believed that situations of sexual harassment and retaliation for complaining about sexual harassment are common occurrences in our society and a matter of common sense. (Pl. aff. ¶51.)

RESPONSE TO STATEMENT NO. 43, sentence no. 3: Deny to the extent that Ellerth's and her husband's opinions had to do with Burlington in the sense that Ellerth felt that her job was being implicitly threatened by Slowik at Burlington, given Slowik's statements to her that he could "make her life very hard or very easy at Burlington," implying that she would have to engage in sexual relations with him in order to succeed at Burlington. (Pl. dep. 113:17-20; Pl. aff. ¶22.) In response to defendant's question, "Did Ted Slowik ever threaten your job?" Ellerth answered "by [Slowik's] sexual harassment [her] job was indeed threatened." (Pl. dep. 308:9-20.)

Statement No. 44: Ellerth never informed Fitzgerald about Slowik's conduct while she was employed at Burlington. (Ellerth Dep., pp. 46, 91, 121, 143, 153, 158, 174-75, 20708).

RESPONSE TO STATEMENT NO. 44: Admit.

Statement No. 45: Ellerth never informed Lawrence about Slowik's conduct while she was employed at Burlington. Ellerth stated she chose not to inform Lawrence because "it would be his duty as my supervisor to report any incidents of sexual harassment." (Ellerth Dep., pp. 357-358.)

RESPONSE TO STATEMENT NO. 45, sentence no. 1: Admit.

RESPONSE TO STATEMENT NO. 45, sentence no. 2: Deny to the extent that Ellerth testified that she did not tell Lawrence because "at the time [she] was still employed with Burlington and [she] did not want [her] job to be in jeopardy" and she felt that telling Lawrence would place her job in jeopardy, or, in the best-case scenario, make her job much more difficult at Burlington. (Pl. dep. 357:23-358:2; 355:13-20.)

Statement No. 46: Ellerth claims that during her employment she told several employees of Burlington and one Burlington customer that she was being harassed by Slowik. Ellerth admits that none of the employees were her superiors. In fact, the highest level employee ellerth claims to have informed about Slowik's conduct was a sales representative, the same position Ellerth held after her promotion. (Pl. Dep., pp. 175-90, 350-55.)

RESPONSE TO STATEMENT NO. 46, sentence no. 1: Admit.

RESPONSE TO STATEMENT NO. 46, sentence no. 2: Admit.

RESPONSE TO STATEMENT NO. 46, sentence no. 3: Deny. The highest level employee Ellerth complained to about Slowik's sexual harassment was Donna Thibideau, defendant's customer service manager, after January 1994 and before March 15, 1994. (Pl. dep. 176:8-177:1; 179:22-180:3). It was during this conversation that Thibideau informed Ellerth that Ann Pillow may also have been harassed by Slowik. (Pl. dep. 178:1-3.)

In addition, defendant's vice president of internal sales, Angelo Brenna, actually witnessed some of Slowik's sexual harassment. (See defendant's 12M statement Nos. 24 and 25.)

In addition, Ellerth complained about sexual harassment by Slowik to: Sherry Hester, customer service representative; Brent Schneider, sales representative; Patrick Crosson, sales representative; Marilyn (last name unknown), "sample" person; Laura Peffal, customer service representative; and Cara Jiminez, from Spring Air. (Pl. dep. 350:6-351:2-14; Jiminez aff. ¶2-5.)[12/]

Statement No. 47: Ellerth claims that she complained to her husband and her parents that Slowik sexually harassed her as the conduct occurred.

12/ References of "Jiminez aff. ¶___" are references to the affidavit of Cara Jiminez, attached as Pl. Ex. H to the appendix to plaintiff's answer brief.

RESPONSE TO STATEMENT NO. 47: Admit. Ellerth's husband and mother testified that she discussed Slowik's sexual harassment of her on numerous occasions with them. (S. Ellerth dep. 15:3-19:5; 24:5-9; 25:21-26:16; 30:4-34:1; 39:12-40:16; 41:5-48:15; 57:16 59:7; 70:12-72:22; 75:3-77:2; 78:14-87:11; 90:2-92:3; B. Harac dep. 6:12-22; 9:16; 13:22-14:19; 15:19-25:22.)[13/]

Statement No. 48: Ellerth claims that on one occasion she told Slowik that what he said was inappropriate. Ellerth does not recall where or when she told Slowik that what he was saying was inappropriate. Further, Ellerth does not recall whether she said it to Slowik in person or over the telephone. Nor does Ellerth recall what Slowik said that prompted her response. Ellerth does recall that no one else was present. (Ellerth Dep., pp. 143-46.)

RESPONSE TO STATEMENT NO. 48: Deny to the extent that Ellerth recalls that the context of her complaint to Slowik about his sexual harassment was after he made an "embarrassing and humiliating sexual innuendo" to Ellerth. (Pl. dep. 143:23145:12.) This complaint had no effect whatsoever on Slowik's behavior. (Pl. dep. 143:23-145:12.) In addition, the time of Ellerth's complaint to Slowik was placed by the Ellerth as occurring between March 1993 and Fall 1993. (Pl. dep. 143:23-145:12.)

13/ References to "S. Ellerth dep. ___" are references to portions of the deposition of Steve Ellerth, attached as Pl. Ex. F to the appendix to plaintiff's answer brief.

References to "B. Harac dep. ____" are references to portions of the deposition of Barbara Harac, attached as Pl. Ex. G to the appendix to plaintiff's answer brief.

Respectfully submitted,

/s/ Margaret A. Zuleger
Margaret A. Zuleger

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Attorney for Plaintiff

Dated: October 19, 1995
Chicago, Illinois

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the within and foregoing document was served by hand on October 19, 1995, before 5:00 p.m., upon the attorneys for defendant at their address of record.

/s/ Margaret A. Zuleger
Margaret A. Zuleger

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT OF KIMBERLY B. ELLERTH

I, KIMBERLY B. ELLERTH, being first duly sworn upon oath, state that I have personal knowledge of, and am competent and capable to testifying to, the following facts:

1. I am the plaintiff in the case of Kimberly B. Ellerth v. Burlington Industries Inc., Case No. 95 C 0839, now pending in the United States District Court for the Northern District of Illinois.

2. Pl. Ex. B accurately summarizes the sexual harassment that I experienced while working for defendant Burlington Industries, Inc. (hereinafter "defendant").

3. In or around March 1993, during the my initial job interview at Burlington with Ted Slowik, defendant's vicepresident of sales and marketing (hereinafter "Slowik"), Slowik asked me on one occasion if I was planning on having a family with my husband.

4. In or around March 1993, during the initial job interview with Slowik, Slowik asked me on one occasion if I was "practicing" to have a family, which I understood to clearly imply having intimate sexual relations with my husband.

5. In or around March 1993, during my initial job interview at Burlington with Slowik, Slowik stared at my breasts on approximately three (3) occasions for "constant" and "prolonged periods of time."

6. In or around March 1993, during my initial job interview at Burlington with Slowik, Slowik stared at my legs on approximately ten (10) occasions for "constant" and "prolonged periods of time."

7. I sent a "follow-up" letter after my initial job interview with Burlington to Fitzgerald, in which I wrote only positive things about the interview with Slowik, hoping that this would help me to stand out as a better candidate for the position for which I was applying. I was enthusiastic and optimistic about the position at Burlington for which I was interviewing.

8. A reason I did not complain about Slowik's offensive behavior during his initial interview of me in the "follow-up" letter that I sent was because Slowik's initial interview of me was merely the first incident in Slowik's campaign of sexual harassment against me and I was still hoping, at that point, that by ignoring Slowik's sexual harassment he might cease such behavior on his own.

9. At defendant's Manhattan, New York offices, in or around the summer of 1993, Slowik had approximately five (5) conversations with me that were not work-related, e.g., he told "off-colored, offensive" jokes when I was alone with him in his office in New York.

10. At defendant's Manhattan, New York offices, in or around the summer of 1993, Slowik told one offensive joke to me during the first long meeting.

11. In or around the summer of 1993, during a business meeting at an Italian restaurant in Manhattan, New York, with another of defendant's vice-presidents, Angelo Brenna, Slowik told approximately twenty (20) jokes of a sexual nature (e.g., about breasts and various sex acts).

12. In or around the summer of 1993, during a business meeting at an Italian restaurant in Manhattan, New York, with vice-president Brenna, Slowik on one occasion reached over and rubbed my knee under the table, causing me to pull my knee away.

13. I found Slowik's reaching over and rubbing of my knee with his hand under the table at the business meeting at an Italian restaurant in Manhattan, New York, to be highly offensive and unwelcome.

14. In or around the summer of 1993, on the walk back to the office from the Italian restaurant in Manhattan, New York, Slowik made the comment to me and to vice-president Brenna "you've got great legs, Kim. What do you think, Angelo?" on one occasion as I was walking three to four feet ahead of Slowik and Brenna and as Slowik was staring at my legs. I felt humiliated and degraded by Slowik's comment, "you've got great legs, Kim. What do you think, Angelo?" and Slowik's staring at my legs as he made this comment, during the walk back to the offices after the second business meeting in New York.

15. While I was in defendant's Greensboro, North Carolina location for training, in or around the summer of 1993, Slowik made five to seven "obnoxious" and "sexually offensive" comments to the waitress at a restaurant, during a business dinner with Dan (last name unknown), Dan's wife and me.

16. While I was in Greensboro, North Carolina for training, in or around the summer of 1993, Slowik invited me to a lounge at the Four Seasons Hotel on one occasion after the business meeting.

17. I felt compelled to accept Slowik's invitation to the "Fifth Season", the lounge of the Four Seasons Hotel in New York, since I was on a business trip and Slowik was my supervisor.

18. In Greensboro, North Carolina, in or around the summer of 1993, Slowik made comments to me about the all-woman band in the lounge of the hotel; he commented two times on what nice breasts they had, two times on what nice legs they had, and five or more times that the skimpy outfits they were wearing were nice.

19. In Greensboro, North Carolina, in or around the summer of 1993, after telling me he thought the band-members in the lounge of the Four Seasons Hotel had nice breasts, Slowik turned to me and said to me "You are a little lacking in that area, aren't you, Kim?" one time, which I understood to be in reference to my breasts.

20. In Greensboro, North Carolina, in or around the summer of 1993, at the lounge in the Four Seasons Hotel,

Slowik told me one time that I should "loosen up," after I did not respond positively to his sexually offensive remarks.

21. In Greensboro, North Carolina, in or around the summer of 1993, in the lounge outside of the Four Seasons Hotel, before departing, Slowik said to me one time, "You know, Kim, I could make your life very hard or very easy at Burlington."

22. I understood Slowik's comment, "you know, Kim, I could make your job very hard or very easy at Burlington," as clearly implying that I would have to engage in sexual relations with Slowik in order to succeed in the business. Slowik's implication that he could make my life at Burlington very hard or very easy depending on whether I engaged in sexual relations with him was clear to me given the totality of the circumstances up to that point, namely Slowik's prior inappropriate comments regarding my appearance and my intimate marital relations, his staring at my breasts and legs, and his unwelcome and offensive touchings on my knees.

23. In Greensboro, North Carolina, in or around the summer of 1993 in the lounge of the Four Seasons Hotel, Slowik stared at me in a sexual way, including approximately two prolonged looks at my breasts and approximately five prolonged looks at my legs.

24. Slowik made approximately 40 sexual innuendoes in phone conversations with me after I returned from training in North Carolina, such as "How are those legs of yours, Kim, ha, ha, ha" or "How are your legs, Kim?"

25. Slowik asked me over the phone on one occasion if my husband and I were still "practicing to have a family."

26. In or around October 1993, at defendant's 333 West Wacker Drive location in Chicago, Illinois, while I was in the sample room folding fabric samples on the floor, Slowik walked by and said "On your knees again, Kim" on one occasion.

27. I understood Slowik's "on your knees again, Kim" comment in October 1993, made while I was on the floor on my knees and Slowik was in an upright position, to be a reference to fellatio. I found this comment degrading and offensive, and found that it rendered an already unequal situation even more degrading and belittling.

28. When Slowik was in town for another client meeting in Fall 1993 at defendant's 333 West Wacker location, he sat in my chair and desk in my office to make his phone calls and told me on one occasion, "It's nice to have my butt where your butt was, Kim." I was made to feel very uncomfortable when Slowik commented that, "it's nice to have my butt where your butt was, Kim" while he was seated in my chair in my office.

29. I recall one or two additional during the time from March 1993 to December 1993, which I cannot recall the specifics of, where Slowik made sexually harassing comments to me.

30. There were intervening telephone conversations between the "it's nice to have my butt where your butt was, Kim" comment and the holiday party, during which Slowik interjected unwelcome sexual innuendoes.

31. At the holiday party in or around December 1993, Slowik came up to my husband, patted him on the shoulder and said on one occasion, "You are a lucky man to have a woman like that," referring to me, as Slowik looked at my legs and buttocks.

32. At the holiday party in or around December 1993, Slowik walked by me and touched my buttocks on one occasion within my husband's view.

33. In a telephone conversation in or around February or March 1994, when I asked Slowik about a customer, he replied, "It must be hard for a woman like you, Kim, to have a job like that, a woman with great legs" on one occasion.

34. Between January 1994 and March 15, 1994, Donna Thibideau from Burlington, North Carolina, told me one time during a phone conversation that a former woman employee named Ann Pillow may have been sexually harassed by Slowik, too.

35. Between January 1994 and March 15, 1994, Patrick Crosson told me approximately three or four times that Slowik had told Crosson that Slowik did not want me to be promoted because I was "arrogant".

36. Between January 1994 and March 15, 1994, Slowik also told Pat Lawrence on one occasion that I was "arrogant".

37. During my job interview with Lawrence for a promotion in or around February 1994, Lawrence told me on one occasion that Slowik "called [me] arrogant."

38. Pat Lawrence said to me on one occasion that the decision about whether to promote me was made difficult for him because Slowik had a say in it.

39. On or about March 15, 1994, during my interview with Slowik for a promotion, Slowik reach over on one occasion and rubbed my knee with his hand.

40. On or about March 15, 1994, at the Marriott Suites, Des Plaines, Illinois, at my interview with Slowik for a promotion, Slowik said to me on one occasion that he had hesitations about having me in the position offered because I was not "loose enough" for him. I understood Slowik's statement that I was not "loose enough" for him to mean that I was not sexually "loose enough" for him, especially given the context in which Slowik made this comment (which was followed by Slowik rubbing my knee).

41. I found Slowik's comments to me and his rubbing of my knee during my interview with him for a promotion to be highly humiliating, embarrassing, offensive and unwelcome.

42. On or about March 15, 1994, during my interview with Slowik for a promotion, Slowik told me approximately four times that the new job was hard work, and I would be travelling a lot and he said "isn't your husband going to miss you?"

43. After March 15, 1994, during a telephone conversation, Slowik made approximately one sexually inappropriate comment to me and told me one time, "you're gonna be out there with men who work in factories, and they

certainly like women with pretty butts/legs". I cried after this phone call.

44. While I was in San Francisco for training, Slowik said something sexually inappropriate to me about my body approximately one time, about my "ass," specifically. As a result, I ran to the bathroom and cried. As Slowik made the inappropriate comment about my "ass" in San Francisco, he stopped and was stared at my back end.

45. The very offensive "joke" that Slowik told me in the telephone conversation he had with me in or around April 1994 was: "What's the difference between a blonde and a limo? Not everyone's been in a limo."

46. In another telephone conversation in or around April or May 1994, on one occasion when I made a business inquiry to Slowik about whether I could get special permission to put a customer's logo into the fabric, Slowik said, "I don't have time for you right now, Kim, unless you tell me what you're wearing." In or around May 1994, when I called Slowik back because I did not get a response to my question the first time, Slowik told me "No," I did not have special permission to do the special request for the customer, and asked me on this occasion if I was wearing shorter skirts yet because that would make my job "a whole heck of a lot easier."

47. According to Lawrence and Thibideau, Lawrence and Thibideau only received complaints about me not returning some telephone calls, and these were received from only one or two customers and employees.

48. In addition to sending a fax to Lawrence at the end of my employment with Burlington, I mailed a letter to Lawrence, dated June 21, 1994, which described the sexual harassment by Slowik. (P1. Ex. C.)

49. While I knew there was a policy against sexual harassment in the employee handbook, I was not aware of whether it was being enforced, whether it was in effect throughout my employment, or who to complain to should I experience a problem with sexual harassment.

50. My husband and I did not believe my job was in jeopardy "based on stories [we] heard on the news and [my] husband's alleged experiences at Sears, Roebuck & Co." My husband and I thought my job would be in jeopardy if I complained about the sexual harassment because it would be very easy for Slowik or anyone else to find reasons to make my job more difficult or to fire me.

51. My comment in my deposition, p. 309, that stories of sexual harassment are "all over the news every day" was meant to convey merely that I believed that situations of sexual harassment and retaliation for complaining about sexual harassment are common occurrences and of common knowledge in our society.

s/Kimberly B. Ellerth
KIMBERLY B. ELLERTH

SUBSCRIBED and SWORN TO before me this October 17, 1995.

s/Dina M. Cavico
NOTARY PUBLIC

KIMBERLY B. ELLERTH v.
BURLINGTON INDUSTRIES, INC.

CASE NO. 95 C 0839

SUMMARY OF SEXUAL HARASSMENT BY TED SLOWIK

COMMENT OR INCIDENT	NUMBER OF COMMENTS OR INCIDENTS
In or around March 1993, during the plaintiff's initial job interview with defendant's vice president of sales and marketing, Ted Slowik (hereinafter "Slowik"), asked if Ellerth was planning on having a family with her husband. (Pl. dep. 25:3-8.)	1 (Pl. aff. ¶3)
In or around March 1993, during the initial job interview with Slowik, Slowik asked if Ellerth was "practicing" to have a family, implying having sex with her husband. (Pl. dep. 28:2-10.)	1 (Pl aff. ¶4)

In or around March 1993, during the initial job interview, Slowik stared at Ellerth's breasts for "constant" and "prolonged periods of time." (Pl. dep. 87:15-24; 85:13-15.)	3 (Pl. aff. ¶5)
In or around March 1993, during the initial job interview, Slowik stared at Ellerth's legs for "constant" and "prolonged periods of time." (Pl. dep. 87:15-25; 85:13-15.)	10 (Pl. aff. ¶6)
At defendant's Manhattan, New York offices, in or around the summer of 1993, Slowik had many conversations with Ellerth that were not work- related, e.g., he told "off-colored, offensive" jokes when she was alone with him in his office in New York. (Pl. dep. 63:3-7; 64:2-16.)	5 (Pl. aff. ¶9)
At the Manhattan, New York offices, in or around the summer of 1993, Slowik told one offensive joke during the first long meeting; (Pl. dep. 65:11-12.)	1 (Pl. aff. ¶10)

In or around the summer of 1993, at an Italian restaurant in Manhattan, New York, Slowik told several jokes of a sexual nature during the second long meeting (luncheon); Angelo Brenna, defendant's vice president of international sales, who worked for Burlington, was also present. Slowik was telling jokes about "breasts, sex acts - along those lines." (P1. dep. 65:12-13; 71:3-4; 68:8-11; 69:3-13:118:16-21.)	20 (Pl. aff. ¶11)
In or around the summer of 1993, at an Italian restaurant in Manhattan, New York, in the presence of vice president Brenna, Slowik reached over and rubbed Ellerth's knee under the table during the luncheon meeting, causing Ellerth to pull her knee away. (P1. dep. 75:9-10; 76:21.)	1 (Pl. aff. ¶12)

In or around the summer of 1993, on the walk back to the office from the Italian restaurant in Manhattan, New York, Slowik said to Ellerth and vice president Brenna, "You have got great legs, Kim. What do you think, Angelo?" as she was walking 3 - 4 feet ahead of them. Ellerth saw that Slowik was staring at her legs as he made this comment. (P1. dep 80:20-81:6.)	1 (Pl. aff. ¶14)
In Greenboro, North Carolina, in or around the summer of 1993, Slowik made "obnoxious" and "sexually offensive" comments to the waitress at a restaurant, where he and Ellerth were attending a business meeting with a Burlington employee, Dan (last name unknown) and Dan's wife. Ellerth was very offended and embarrassed by these comments. (P1. dep. 102:12-105:13; 117:21-118:1.)	5-7 (Pl. aff. ¶15)
In Greensboro, North Carolina, in or around the summer of 1993, Slowik invited Ellerth to a lounge at the hotel they were staying in on the business trip (Four Seasons) after their business meeting. (P1. dep. 106:8-11.)	1 (P1. aff. ¶16)

In Greensboro, North Carolina, in or around the summer of 1993, Slowik made comments to Ellerth about the all-woman band in the lounge of the hotel where Slowik and Ellerth were staying, including what nice breasts they had. (P1. dep. 109:3-6.)	2 (Pl. aff. ¶18)
In Greensboro, North Carolina, in or around the summer of 1993, Slowik made comments to Ellerth about the all-woman band in the lounge of the hotel where Slowik and Ellerth were staying, including what nice legs they had. (P1. dep. 109:3-6.)	2 (Pl. aff. ¶18)
In Greensboro, North Carolina, in or around the summer of 1993, Slowik made comments to Ellerth about the all-woman band in the lounge of the hotel where Slowik and Ellerth were staying, including that their skimpy outfits were nice. (P1. dep. 109:3-6.)	5+ (Pl. aff. ¶18)

In Greensboro, North Carolina, in or around the summer of 1993, after telling Ellerth he thought the band-members in the lounge of the Four Seasons Hotel had nice breasts, Slowik turned to Ellerth and said "You are a little lacking in that area, aren't you, Kim?", referring to the Ellerth's breasts. Ellerth was very humiliated and offended by this comment. (P1. dep. 109:3-10.)	1 (P1. aff. ¶19)
In Greensboro, North Carolina, in or around the summer of 1993, at the lounge in the Four Seasons Hotel, Slowik told Ellerth that she should "loosen up," after she did not respond to his sexually offensive remarks. (P1. dep. 111:3-5.)	1 (Pl. aff. ¶20)
In Greensboro, North Carolina, in or around the summer of 1993, in the lounge outside of the Four Seasons Hotel, before departing, Slowik said to Ellerth, "You know, Kim, I could make your life very hard or very easy at Burlington." (P1. dep. 113:17-20.)	1 (Pl. aff. ¶21)

In Greensboro, North Carolina, in or around the summer of 1993 in the lounge of the Four Seasons Hotel, Slowik stared at Ellerth in a sexual way, including prolonged looks at her breasts. (P1. dep. 114:10-19.)	2 (Pl. aff. ¶23)
In Greensboro, North Carolina, in or around the summer of 1993 in the lounge of the Four Seasons Hotel, Slowik stared at Ellerth in a sexual way, including prolonged looks at her legs. (P1. dep. 114:10-19.)	5 (Pl. aff. ¶23)
Slowik made sexual innuendoes in all phone conversations with Ellerth after she returned from training in North Carolina, such as "How are those legs of yours, Kim, ha, ha, ha" or "How are your legs, Kim?" (P1. dep. 132:9-22.)	40 (Pl. aff. ¶24)
Slowik asked Ellerth over the phone if she and her husband were still "practicing to have a family." (P1. dep. 133:11-13.)	1 (Pl. aff. ¶25)

In or around October 1993, at defendant's 333 West Wacker Drive location in Chicago, Illinois, while Ellerth was in the sample room for a meeting with a client folding fabric samples on the floor, Slowik walked by and said "On your knees again, Kim." (P1. dep. 135:3-136:6.)	1 (Pl. aff. ¶26)
When Slowik was in town for another client meeting in Fall 1993 at the 333 West Wacker location, he used Ellerth's chair and desk in her office to make his phone calls and told Ellerth, "It's nice to have my butt where your butt was, Kim." (P1. dep. 140:12-141:8.)	1 (Pl. aff. ¶28)
Ellerth recalls 1-2 more incidents during the time from March 1993 to December 1993, which she cannot recall the specifics of, where Slowik made sexually harassing comments to her.	1-2 (Pl. aff. ¶29)

At the holiday party in or around December 1993, Slowik came up to Ellerth's husband, patted him on the shoulder and said, "You are a lucky man to have a woman like that," referring to Ellerth. Slowik was looking at Ellerth's legs and buttocks when he made this comment. (P1. dep. 146:19-147:21; 148:19-24; 150:16-23.)	1 (Pl. aff. ¶31) 1 (Pl. aff. ¶31)
At the holiday party in or around December 1993, Slowik walked by Ellerth and touched his hand to her buttocks within the Ellerth's husband's view. (P1. dep. 151:24-152:1.)	1 (Pl. aff. ¶32)
In a telephone conversation in or around February or March 1994, when Ellerth asked Slowik about a customer, he replied, "It must be hard for a woman like you, Kim, to have a job like that, a woman with great legs." (P1. dep. 171:11-174:17.)	1 (Pl. aff. ¶33)

Between January 1994 and March 15, 1994, Donna Thibideau from Burlington, North Carolina, told Ellerth during a phone conversation that a former woman employee named Ann Pillow may have been sexually harassed by Slowik, too. (P1. dep. 177:22-178:3.)	1 (Pl. aff. ¶34)
Between January 1994 and March 15, 1994, Patrick Crosson told Ellerth that Slowik had told Crosson that Slowik did not want Ellerth to be promoted because she was "arrogant." (P1. dep. 187:20-24; 188: 18-19.)	3-4 (Pl. aff. ¶35)
Between January 1994 and March 15, 1994, Slowik also told Pat Lawrence that Ellerth was "arrogant". (P1. dep. 188:15-19.)	1 (Pl. aff. ¶36)
During Ellerth's job interview with Pat Lawrence for a promotion in or around February 1994, Lawrence told Ellerth that Slowik "called her arrogant." (P1. dep. 195:4-11.)	1 (Pl. aff. ¶37)

Pat Lawrence said that the decision about whether to promote the Ellerth was made difficult for him because Slowik had a say in it. (P1. dep. 312:11-13.)	1 (Pl. aff. ¶38)
On or about March 15, 1994, at the Marriott Suites, Des Plaines, Illinois, at Ellerth's interview with Slowik for a promotion, Slowik said that he had hesitations about having Ellerth in the position offered because she was not "loose enough" for him. (P1. dep. 199:2-200:2.)	1 (Pl. aff. ¶40)
On or about March 15, 1994, during Ellerth's interview with Slowik for a promotion, Slowik reach over and rubbed Ellerth's knee with his hand. (P1. dep. 200:3-4.)	1 (Pl. aff. ¶39)
On or about March 15, 1994, during Ellerth's interview with Slowik for a promotion, Slowik told Ellerth that the new job was hard work, and Ellerth would be travailing a lot and said "isn't your husband going to miss you?" (P1. dep. 200:12-15.)	3 (Pl. aff. ¶42)

After March 15, 1994, Slowik called Ellerth to hire her and tell her she had an option between two (2) jobs. Slowik then made a sexually inappropriate comment to Ellerth and told Ellerth, "you're gonna be out there with men who work in factories, and they certainly like women with pretty butts/legs". Ellerth cried after the phone call. (P1. dep. 204:17-207:2; P1. aff. ¶43.)	1 (Pl. aff. ¶43)
After receiving her new promotion, when Ellerth traveled to San Francisco to be trained for her new position, Slowik at first ignored her and did not even say hello to her for 3-4 days. (P1. dep. 216:5-7.)	1 (Pl. aff. ¶

Later, still in San Francisco, Slowik said something sexually inappropriate to her about her body, about her "ass," specifically. As a result, Ellerth ran to the bathroom and cried. (Pl. dep. 216:8-9; 226:2-5; 238:22-239:15.) As Slowik said this he stopped and was staring at Ellerth's back end. (Pl. dep. 247:6-24.)	1 (Pl. aff. ¶44) 1 (Pl. aff. ¶44)
In a telephone call in or around April 1994, Slowik told Ellerth a very offensive joke about blonds, a limo, and sex: "What's the difference between a blonde and a limo? Not everyone's been in a limo." (Pl. dep. 253:16-17; Pl. aff. ¶45.)	1 (Pl. aff. ¶45)
In another telephone conversation in or around April or May 1994, when Ellerth made a business inquiry to Slowik about whether she could get special permission to put a customer's logo into the fabric, Slowik responded, "I don't have time for you right now, Kim, unless you tell me what you're wearing." (Pl. dep. 256:2-257:5.)	1 (Pl. aff. ¶46)

In or around May 1994, when Ellerth called Slowik back because she did not get a response to her question the first time, Slowik told her "No," she did not have special permission to do the special request for the customer, and asked her if she was wearing shorter skirts yet because that would make her job "a whole heck of a lot easier." (Pl. dep. 257:8-258:4.)1	1 (Pl. aff. ¶46)
Ellerth resigned her position at Burlington on or about May 30, 1994, within 1-2 weeks after this conversation. (Pl. dep. 273:9-23.)	
TOTAL	139